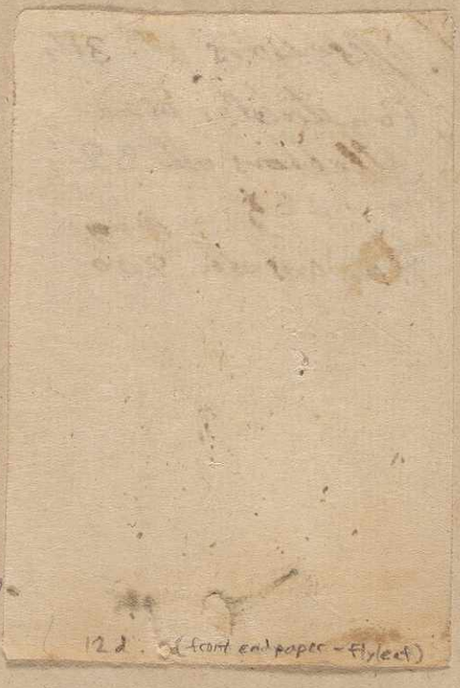
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an act Respecting Highways 1797

Commonwealth of Massachusetts.

IN THE YEAR OF OUR LORD, ONE THOUSAND, SEVEN HUNDRED AND NINETY-SEVEN.

An Act, in addition to the several Acts now in force, respecting Highways.

SEC. 1. BE *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same*, That the inhabitants of Plantations unincorporated, who are or shall be empowered and required to assess taxes upon themselves towards the support of government, or for defraying the charges of any County, shall be vested with like powers, be under the like obligations, and liable to like penalties, so far as such powers, obligations and penalties have any relation to the making, repairing or amending the Highways, and for compensating any individual who may suffer damage by laying out any Highway, as the Towns within this Commonwealth have, are under, or subject to; and like proceedings shall be had by and against such Plantations, as may be had by or against said Towns, in every case respecting the Highways, *mutatis mutandis*. And the assessors of such Plantations shall be held to perform all the duties required of the Selectmen of Towns relating to Highways, and invested with the same powers.

SEC. 2. *And be it further enacted*, That all Highways laid out, or hereafter to be laid out, through any tracts of land in the Commonwealth not comprehended within the bounds of any incorporated Town or Plantation aforesaid, shall be made passable and convenient for travelling, and kept in good repair by the owners or proprietors of the said tract of land, Township, or Plantation; unless in the judgment of the Court of General Sessions of the Peace for the County in which such lands lie, it may be deemed unreasonable; in which case the same shall be done at the expense of the County, or partly at the expense of the County and partly at the expense of the proprietors, as the said Court shall order. And all the proprietors or owners of such tracts of land, Townships or Plantations last mentioned, shall be held to pay their respective proportions, according to their interest, of all cost and expences of making and repairing the ways aforesaid, thro' any part of the tracts, Townships, or Plantations last mentioned. *Provided nevertheless*, That all lands reserved for the use of the first settled minister, the ministry, schools, or for the future appropriation of the General Court, in the said tracts, Plantations, and Townships last mentioned, shall be and hereby are exempted from all taxes for making and repairing Highways therein.

SEC. 3. *Be it further enacted*, That the Courts of General Sessions of the Peace in the several Counties in this Commonwealth, whenever application shall be made to them to lay out any new Highway, through any such tract, Township or Plantation last mentioned, or for an order thereof to amend and repair any Highway, already laid out in the same, the said Court shall cause notice thereof to be given, by publishing the substance of such application three weeks successively in one of the Newspapers printed in the town of Boston, and such other Paper as the said Court shall direct, in order that the proprietors of said lands may appear before said Court, at such time as the Court shall therein prefix, and shew cause why such Highway should not be laid out or amended as the case may be. And if such proprietors do not appear and shew cause to the satisfaction of said Court, that such Highway ought not to be laid out, or made or amended at the expense of said proprietors, then the said court may proceed to lay out such Highway in the manner prescribed by law, and to order the same to be made or amended at the expense of the said proprietors as the case should require; and shall cause an assessment to be made on such tracts of land, Township or Plantation, at so much per acre as they shall judge necessary for making or amending such Highway, and defraying the necessary expense attending the same; and the proprietors of the said tracts, Townships or Plantations last mentioned, where the lands therein are held in severalty, shall be severally assessed their respective proportions in every tax which may be ordered for making or repairing the Highways therein; *Provided* such proprietors shall previously furnish said Court with proper documents for that purpose; and the Treasurer of the County wherein the land so assessed may lie, shall forthwith cause such tax to be advertised in manner aforesaid, requiring each and every owner or proprietor of any part of the tract, Township or Plantation last mentioned, to pay said tax, or if the assessment is made in severalty, his part thereof to said Treasurer within six months from the first publishing said advertisement, and notifying such proprietors, that unless the same shall be paid within the time specified, so much of the said land will be sold at public vendue, at a certain day and place in the said advertisement to be expressed; and when any proprietor or owner of any part of such tract, Township or Plantation last mentioned, (the parts thereof not being severally assessed,) shall pay his proportion of such tax, he shall take a receipt therefor, describing the land for which he shall pay such tax; and so much of the remaining part of such land for which said tax shall not be paid, before the expiration of the said six months, shall be sold by the Treasurer aforesaid, or his successor in office, or such Committee as the Court of General Sessions of the Peace aforesaid shall appoint for that purpose, at the time and place set forth in the advertisement, as may be necessary to pay the remaining part of said tax with incidental charges. And the said Treasurer or Committee are hereby authorised to adjourn the time of sale of such land from day to day, if he or they shall judge it necessary, not exceeding three days, and make a good and sufficient deed or deeds of such lands, allowing the same time of redemption, and subject to the payment of the like interest as is by law allowed in the cases of land sold for taxes; and the money so raised shall be applied by said Court, or by a committee to be by them appointed for that purpose to make and repair said Highways. And a similar method shall be taken from time to time by said Court, for keeping in repair all Highways leading through such tracts, Townships or Plantations last mentioned, in case the owners thereof shall neglect to keep said highway in sufficient repair. And the owners and proprietors of any such tract, Township or Plantation last mentioned, are hereby authorised to call meetings for the purpose of raising such sums of money as they may judge necessary for making and repairing such Highways, and for choosing officers for assessing and collecting the same.

SEC. 4. *Be it further enacted*, That it shall be the duty of the Selectmen of the several Towns and Districts, and of the Assessors of the several Plantations within this Commonwealth, before the first day of May annually, to assign to the several Surveyors, their divisions and limits for making and repairing the Highways, and one half of the sum at least, which shall be agreed upon and granted by any Town or District for making or repairing the Highway, shall be laid out and expended for that purpose, before the first day of July next after granting the same.

And when any Town, District or Plantation shall neglect to raise money for the purpose of making and repairing the Highways and Townways as aforesaid, it shall be the duty of the several Surveyors in such Towns, to cause so much labour to be done on the said ways in their respective Districts before the 1st day of July, as shall amount to one half at least of the expences of repairing said ways the year next preceding.

SEC. 5. *And be it further enacted*, That every Town or District may at their aforesaid annual meeting, or any meeting warned for that purpose, authorise their Surveyors, or any other person or persons, to enter into any contract or contracts for making or repairing the Highways or Townways within the same or any part thereof, and may also empower their Surveyors of Highways, to collect taxes for making and repairing the ways, which shall not be paid in labour or otherwise, within the time limited by law, or such periods as may be agreed upon by such Town or District, and for that purpose the assessors shall deliver to them warrants of distress, which shall be in the form prescribed by law for collecting other Town or District taxes, *mutatis mutandis*; or they may deliver to the Collector or Collectors of taxes a warrant for collecting the deficiency in any Highway tax, which the Collector is hereby empowered and required to levy in the same way and manner as other taxes are by law to be collected; and pay the same over to the Surveyor or Surveyors, who shall be held to account with the Selectmen for the expenditure thereof. And if any money shall remain unexpended in the hands of the Surveyor or Surveyors, after the expiration of their office, they shall pay the same to the Town Treasurer.—And if any Surveyor shall neglect to pay over such sums to the said Treasurer upon demand, the said Treasurer, or his successor in that office, shall have power to recover the same, in an action upon the case, with twenty per cent. in addition thereto, to the use of the Town or District, and with costs of suit. And if pending the action, another Town or District Treasurer shall be appointed, he, on noting his appearance on the record, shall have power to pursue the same action to final judgment and execution.—And if any Surveyor who shall receive his Rate Bill of the Selectmen or Assessors of any Town or District, shall neglect to exhibit the same to them on the first Monday of July annually; and also at the expiration of the term for which he shall be appointed, and at those times respectively to render an account of all monies that have been expended on the ways, he, for each offence, shall forfeit and pay twenty dollars, to be recovered in an action of debt, with costs of suit, by the said Treasurer as aforesaid, and to the uses aforesaid.

SEC. 6. *And be it further enacted*, That when any new Highway has been, or shall have been laid out, and accepted by the Court of General Sessions of the Peace, a reasonable time shall be allowed to the Town or District, or any Plantation assessed in any State or County tax, through which such Highway shall lead, to make it passable, safe, and convenient for Travellers and others passing with their teams, waggons or other carriages, provided that such time shall not exceed twelve months from the time of such acceptance, unless said Court shall, for reasons specially given, order a longer time. And if any Town, District or Plantation aforesaid, shall neglect their duty in that respect, the said Court, on application therefor, shall appoint a Committee of three disinterested freeholders in the same County, to enter into any contract or contracts for making such new Highway passable as aforesaid, the expense of which shall be immediately afterwards defrayed by the delinquent Town, District or Plantation last mentioned; and in default thereof, the said Court shall issue a warrant of distress against such Town, District or Plantation.

SEC. 7. *And be it further enacted*, That the lands of non-resident proprietors, shall be taxed for the making and repairing Highways, in the same way they are taxed for other Town or County taxes; and upon default of payment, the same proceedings shall be had as is provided for the collection of other taxes from such persons and without any other notice.

SEC. 8. *Whereas*, By law it is made the duty of Surveyors of the Highways when the same are blocked up or incumbered with snow, forthwith to cause so much thereof to be removed or trod down, as will render the roads passable, which cannot be conveniently effected by a tax granted for that purpose,

Be it therefore further enacted, That all such incumbrances may be removed in the manner the same might be done in any Town or District who shall neglect to vote or agree upon a sum for the express purpose of repairing the Highways and Town-ways; Provided, that any Town or District shall agree upon that mode of removing such incumbrances in the month of March or April annually—any law to the contrary notwithstanding.

In the House of Representatives, Feb. 23, 1797.
This Bill having had three several Readings, passed to be enacted,
EDWARD H. ROBBINS, *Speaker.*

In Senate, Feb. 25, 1797.
This Bill having had two several Readings, passed to be enacted,
SAMUEL PHILLIPS, *President.*

Feb. 28, 1797.—By the Governor Approved,
SAMUEL ADAMS.

A True Copy—Attest,
JOHN AVERY, *Secretary.*

Boston: Printed by Young and Minns, State Printers.

an act Respecting Highways 1797

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Chelmsford, Mass

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THE

PERPETUAL LAWS

OF THE

COMMONWEALTH

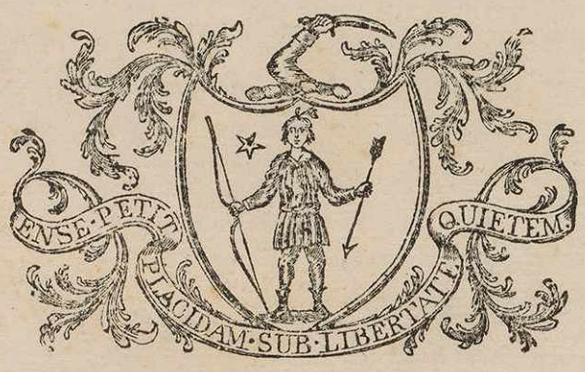
OF

MASSACHUSETTS,

FROM THE COMMENCEMENT OF THE CONSTITUTION,
IN OCTOBER, 1780,
TO THE LAST WEDNESDAY IN MAY, 1789.

TO WHICH ARE PREFIXED,
THE DECLARATION OF INDEPENDENCE, THE ARTICLES OF CONFEDERATION, THE CONSTITUTION OF THE COMMONWEALTH, THE TREATY OF PEACE, BETWEEN GREAT-BRITAIN AND AMERICA, AND THE CONSTITUTION OF THE UNITED STATES.

Published by Order of the General Court.



BOSTON:
PRINTED BY ADAMS AND NOURSE,
Printers to the Honourable GENERAL COURT.

M, DCC, LXXXIX.

In Congreſs, July 4, 1776.

A DECLARATION

By the REPRESENTATIVES of the UNITED STATES of AMERICA, In CONGRESS assembled:

WHEN in the courſe of human events, it becomes neceſſary for one people to diſſolve the political bands which have connected them with another, and to aſſume among the powers of the earth, the ſeparate and equal ſtation to which the laws of nature and of nature's God entitle them, a decent reſpect to the opinions of mankind requires that they ſhould declare the cauſes which impel them to the ſeparation.

We hold theſe truths to be ſelf-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among theſe are life, liberty, and the purſuit of happineſs:—That to ſecure theſe rights, governments are inſtituted among men, deriving their juſt powers from the conſent of the governed; that whenever any form of government becomes deſtructive of theſe ends, it is the right of the people to alter or to aboliſh it, and to inſtitute new government, laying its foundation on ſuch principles, and organizing its powers in ſuch form, as to them ſhall ſeem moſt likely to effect their ſafety and happineſs. Prudence, indeed, will dictate, that governments long eſtabliſhed ſhould not be changed for light and tranſient cauſes; and accordingly all experience hath ſhewn, that mankind are more diſpoſed to ſuffer, while evils are ſufferable, than to right themſelves by aboliſhing the forms to which they are accuſtomed. But when a long train of abuſes and uſurpations, purſuing invariably the ſame object, evinces a deſign to reduce them under abſolute deſpotiſm, it is their right, it is their duty, to throw off ſuch government, and to provide new guards for their future ſecurity. Such has been the patient ſufferance of theſe Colonies; and ſuch is now the neceſſity which conſtrains them to alter their former ſyſtems of government. The hiſtory of the preſent King of *Great-Britain* is a hiſtory of repeated injuries and uſurpations, all having in direct object the eſtabliſhment of an abſolute tyranny over theſe States. To prove this, let facts be ſubmitted to a candid world.

He

He has refuſed his aſſent to laws, the moſt wholeſome and neceſſary for the publick good.

He has forbidden his Governours to paſs laws of immediate and preſſing importance, unleſs ſuſpended in their operation till his aſſent ſhould be obtained; and when ſo ſuſpended, he has utterly neglected to attend to them.

He has refuſed to paſs other laws for the accommodation of large diſtricts of people, unleſs thoſe people would relinquiſh the right of repreſentation in the Legiſlature, a right ineſtimable to them, and formidable to tyrants only.

He has called together Legiſlative bodies at places unuſual, uncomfortable, and diſtant from the depoſitory of their publick records, for the ſole purpoſe of fatiguing them into compliance with his meaſures.

He has diſſolved Repreſentative Houſes repeatedly, for oppoſing with manly firmneſs his invaſions on the rights of the people.

He has refuſed for a long time, after ſuch diſſolutions, to cauſe others to be elected; whereby the Legiſlative powers, incapable of annihilation, have returned to the people at large for their exerciſe; the State remaining in the mean time expoſed to all the danger of invaſion from without, and convulſions within.

He has endeavoured to prevent the population of theſe States; for that purpoſe obſtructing the laws for naturalization of foreigners; refuſing to paſs others to encourage their migrations hither, and raiſing the conditions of new appropriations of lands.

He has obſtructed the adminiſtration of juſtice, by refuſing his aſſent to laws for eſtabliſhing judiciary powers.

He has made Judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their ſalaries.

He has erected a multitude of new offices, and ſent hither ſwarms of officers to harraſs our people, and eat out their ſubſtance.

He has kept among us, in times of peace, ſtanding armies, without the conſent of our Legiſlatures.

He has affected to render the military independent of and ſuperior to the civil power.

He has combined with others to ſubject us to a juriſdiction foreign to our Conſtitution, and unacknowledged by our laws; giving his aſſent to their acts of pretended legiſlation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from puniſhment for any murders which they ſhould commit on the inhabitants of theſe States:

For

For cutting off our trade with all parts of the world :

For impoſing taxes on us without our conſent :

For depriving us, in many caſes, of the benefits of trial by Jury :

For tranſporting us beyond ſeas to be tried for pretended offences :

For aboliſhing the free ſyſtem of *Engliſh* laws in a neighbouring Province, eſtabliſhing therein an arbitrary government, and enlarging its boundaries, ſo as to render it at once an example and fit inſtrument for introducing the ſame abſolute rule into theſe Colonies :

For taking away our charters, aboliſhing our moſt valuable laws, and altering fundamentally the forms of our governments :

For ſuſpending our own Legiſlatures, and declaring themſelves inveſted with power to legiſlate for us in all caſes whatſoever.

He has abdicated government here, by declaring us out of his protection, and waging war againſt us.

He has plundered our ſeas, ravaged our coaſts, burnt our towns, and deſtroyed the lives of our people.

He is at this time, tranſporting large armies of foreign mercenaries to compleat the works of death, deſolation and tyranny, already begun with circumſtances of cruelty and perfidy, ſcarcely paralleled in the moſt barbarous ages, and totally unworthy the head of a civilized nation.

He has conſtrained our fellow citizens, taken captive on the high ſeas, to bear arms againſt their country, to become the executioners of their friends and brethren, or to fall themſelves by their hands.

He has excited domeſtic inſurrections amongſt us, and has endeavoured to bring on the inhabitants of our frontiers, the mercileſs Indian ſavages, whoſe known rule of warfare, is an undiſtinguiſhed deſtruction, of all ages, ſexes and conditions.

In every ſtage of theſe oppreſſions we have petitioned for redreſs, in the moſt humble terms : Our repeated petitions have been anſwered only by repeated injury. A Prince, whoſe character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our *Britiſh* brethren. We have warned them from time to time, of attempts by their Legiſlature to extend an unwarrantable juriſdiction over us. We have reminded them of the circumſtances of our emigration and ſettlement here. We have appealed to their native juſtice and magnanimity, and we have conjured them by the ties of our common kindred, to diſavow theſe uſurpations, which would inevitably interrupt our connections and correſpondence.

They

They too have been deaf to the voice of juſtice and of conſanguinity. We muſt, therefore, acquieſce in the neceſſity which denounces our ſeparation, and hold them, as we hold the reſt of mankind, enemies in war; in peace, friends.

We, therefore, the Repreſentatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS aſſembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, Do, in the name and by the authority of the good People of theſe Colonies, ſolemnly publiſh and declare, that theſe United Colonies are, and of right ought to be, *Free and Independent States*; that they are abſolved from all allegiance to the *Britiſh Crown*, and that all political connection between them and the State of *Great-Britain*, is, and ought to be totally diſſolved; and that as *Free and Independent States*, they have full power to levy war, conclude peace, contract alliances, eſtabliſh commerce, and to do all other acts and things which *Independent States*, may of right do. And for the ſupport of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our ſacred honour.

Signed by order and in behalf of the CONGRESS.

JOHN HANCOCK, Preſident.

Atteſt.

CHARLES THOMSON, Secretary.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION,

Between the States of NEW-HAMPSHIRE, MASSACHUSETTS-BAY, RHODE-ISLAND and PROVIDENCE-PLANTATIONS, CONNECTICUT, NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA, and GEORGIA.

ARTICLE I.

THE ſtile of this confederacy ſhall be, "THE UNITED STATES OF AMERICA."

ARTICLE II. Each ſtate retains its ſovereignty, freedom and independence, and every power, juriſdiction and right, which is not by this confederation expreſsly delegated to the United States in Congreſs aſſembled.

ARTICLE III. The ſaid States hereby ſeverally enter into a firm league of friendſhip with each other for their common defence, the ſecurity of their liberties and their mutual and general welfare; binding themſelves to aſſiſt each other againſt all force offered to or attacks made upon them or any of them on account of religion, ſovereignty, trade, or any other pretence whatever.

ARTICLE IV. The better to ſecure and perpetuate mutual frendſhip and intercourſe among the people of the different States in this union, the free inhabitants of each of theſe States, (paupers, vagabonds and fugitives from juſtice excepted,) ſhall be entitled to all privileges and immunities of free citizens in the ſeveral States; and the people of each State ſhall have free ingreſs and regreſs to and from any other State, and ſhall enjoy therein all the privileges of trade and commerce, ſubject to the ſame duties, impoſitions and reſtrictions as the inhabitants thereof reſpectively, provided that ſuch reſtriction ſhall not extend ſo far as to prevent the removal of property imported into any State to any other State, of which the owner is an inhabitant; *provided alſo*, that no impoſition, duties or reſtriction, ſhall be laid by any State on the property of the United States, or either of them.

If any perſon guilty of or charged with treaſon, felony or other high miſdemeanor in any State, ſhall flee from juſtice and be found in any of the United States, he ſhall upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having juriſdiction of his offence.

Full faith and credit ſhall be given in each of theſe States to the records, acts and judicial proceedings of the Courts and magiſtrates of every other State.

ARTICLE V. For the more convenient management of the general intereſts of the United States, delegates ſhall be annually appointed, in ſuch manner as the legiſlature of each State ſhall direct, to meet in Congreſs on the firſt Monday in *November*, in every year, with a power reſerved to each State to recall its delegates or any of them, at any time within the year, and to ſend others in their ſtead, for the remainder of the year.

No

No State ſhall be repreſented in Congreſs by leſs than two, nor by more than ſeven members; and no perſon ſhall be capable of being a delegate for more than three years in any term of ſix years; nor ſhall any perſon, being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any ſalary, fees or emolument of any kind.

Each State ſhall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining queſtions in the United States in Congreſs aſſembled, each State ſhall have one vote.

Freedom of ſpeech and debate in Congreſs ſhall not be impeached or queſtioned in any Court or place out of Congreſs; and the members of Congreſs ſhall be protected in their perſons from arreſts and impriſonments, during the time of their going to and from, and attendance on Congreſs, except for treaſon, felony or breach of the peace.

ARTICLE VI. No State, without the conſent of the United States in Congreſs aſſembled, ſhall ſend any embaſſy to, or receive any embaſſy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor ſhall any perſon holding any office of profit or truſt under the United States, or any of them, accept of any preſent, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor ſhall the United States in Congreſs aſſembled, or any of them, grant any title of nobility.

No two or more ſtates ſhall enter into any treaty, confederation or alliance whatever between them, without the conſent of the United States in Congreſs aſſembled, ſpecifying accurately the purpoſe for which the ſame is to be entered into, and how long it ſhall continue.

No State ſhall lay any impoſts or duties, which may interfere with any ſtipulations in treaties entered into by the United States in Congreſs aſſembled, with any King, Prince or State, in purſuance of any treaties already propoſed by Congreſs to the Courts of *France* and *Spain*.

No veſſels of war ſhall be kept up in time of peace by any State, except ſuch number only as ſhall be deemed neceſſary by the United States in Congreſs aſſembled, for the defence of ſuch State or its trade; nor ſhall any body of forces be kept up by any State in time of peace, except ſuch number only as, in the judgment of the United States in Congreſs aſſembled, ſhall be deemed requiſite to garriſon the forts neceſſary for the defence of ſuch State; but every State ſhall always keep up a well regulated and diſciplined militia, ſufficiently armed and accoutred, and ſhall provide and have conſtantly ready for uſe, in public ſtores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State ſhall engage in any war without the conſent of the United States in Congreſs aſſembled, unleſs ſuch State be actually invaded by enemies, or ſhall have certain advice of a reſolution being formed by ſome nation of Indians to invade ſuch State, and the danger is ſo imminent as not to admit of a delay, till the United States in Congreſs aſſembled can be conſulted; nor ſhall any State grant commiſſions to any ſhips or veſſels of war, nor letters of marque or repriſal, except it be after a declaration of war by the United States in Congreſs aſſembled, and then only againſt the kingdom or State and the ſubjects thereof againſt which war has been ſo declared, and under ſuch regulations as ſhall be eſtabliſhed by the United States in Congreſs aſſembled, unleſs ſuch State be infeſted by pirates, in which caſe veſſels of war may be fitted out for that occaſion and kept ſo long as the danger ſhall continue or until the United States in Congreſs aſſembled ſhall determine otherwiſe.

ARTICLE VII. When land forces are raiſed by any State for the common defence, all officers of or under the rank of Colonel ſhall be appointed by the legiſlature of each State reſpectively by whom ſuch forces ſhall be raiſed, or in ſuch manner

manner as ſuch State ſhall direct; and all vacancies ſhall be filled up by the State which firſt made the appointment.

ARTICLE VIII. All charges of war and all other expences that ſhall be incurred for the common defence or general welfare, and allowed by the United States in Congreſs aſſembled, ſhall be defrayed out of a common treaſury, which ſhall be ſupplied by the ſeveral States in proportion to the value of all land within each State, granted to or ſurveyed for any perſon, as ſuch land and the buildings and improvements thereon ſhall be eſtimated, according to ſuch mode as the United States in Congreſs aſſembled ſhall from time to time direct and appoint.

The taxes for paying that proportion ſhall be laid and levied by the authority and direction of the legiſlatures of the ſeveral States, within the time agreed upon by the United States in Congreſs aſſembled.

ARTICLE IX. The United States in Congreſs aſſembled ſhall have the ſole and excluſive right and power of determining on peace and war, except in the caſes mentioned in the ſixth article—of ſending and receiving ambaſſadors—entering into treaties and alliances, *provided*, that no treaty of commerce ſhall be made, whereby the legiſlative power of the reſpective States ſhall be reſtrained from impoſing ſuch impoſts and duties on foreigners, as their own people are ſubjected to, or from prohibiting the exportation or importation of any ſpecies of goods or commodities whatſoever—of eſtabliſhing rules for deciding in all caſes, what captures on land or water ſhall be legal, and in what manner prizes taken by land or naval forces in the ſervice of the United States ſhall be divided or appropriated—of granting letters of marque and repriſal in time of peace—appointing Courts for the trial of piracies and felonies committed on the high ſeas, and eſtabliſhing Courts for receiving and determining finally appeals in all caſes of captures; *Provided*, that no member of Congreſs ſhall be appointed udge of any of the ſaid Courts.

The United States in Congreſs aſſembled ſhall alſo be the laſt reſort on appeal in all diſputes and differences now ſubſiſting, or that hereafter may ariſe between two or more States concerning boundary, juriſdiction or any other cauſe whatever; which authority ſhall always be exerciſed in the manner following:—Whenever the legiſlative or executive authority or lawful agent of any State in controverſy with another ſhall preſent a petition to Congreſs, ſtating the matter in queſtion and praying for a hearing, notice thereof ſhall be given by order of Congreſs to the legiſlative or executive authority of the other State in controverſy, and a day aſſigned for the appearance of the parties by their lawful agents, who ſhall then be directed to appoint by joint conſent commiſſioners or judges to conſtitute a court for hearing and determining the matter in queſtion: but if they cannot agree, Congreſs ſhall name three perſons out of each of the United States, and from the liſt of ſuch perſons each party ſhall alternately ſtrike out one, the petitioners beginning, until the number ſhall be reduced to thirteen; and from that number not leſs than ſeven nor more than nine names, as Congreſs ſhall direct, ſhall in the preſence of Congreſs, be drawn out by lot; and the perſons whoſe names ſhall be ſo drawn, or any five of them, ſhall be commiſſioners or judges to hear and finally determine the controverſy, ſo always as a major part of the judges, who ſhall hear the cauſe, ſhall agree in the determination; and if either party ſhall neglect to attend at the day appointed, without ſhewing reaſons which Congreſs ſhall judge ſufficient, or being preſent ſhall refuſe to ſtrike, the Congreſs ſhall proceed to nominate three perſons out of each State, and the Secretary of Congreſs ſhall ſtrike in behalf of ſuch party abſent or refuſing; and the judgment and ſentence of the Court to be appointed in the manner before preſcribed, ſhall be final and concluſive; and if any of the parties ſhall refuſe to ſubmit to the authority of ſuch Court, or to appear or defend their claim or cauſe, the Court ſhall nevertheleſs proceed to pronounce ſentence or judgment, which ſhall in like manner be final and deciſive, the judgment or ſentence and other

proceedings being in either caſe tranſmitted to Congreſs, and lodged among the acts of Congreſs for the ſecurity of the parties concerned: *Provided*, That every commiſſioner, before he ſits in judgment, ſhall take an oath, to be adminiſtered by one of the judges of the Supreme or Superior Court of the State where the cauſe ſhall be tried, "well and truly to hear and determine the matter in queſtion, according to the beſt of his judgment, without favour, affection or hope of reward:" *Provided alſo*, That no State ſhall be deprived of territory for the benefit of the United States.

All controverſies concerning the private right of ſoil, claimed under different grants of two or more States, whoſe juriſdictions as they may reſpect ſuch lands and the States which paſſed ſuch grants are adjuſted, the ſaid grants or either of them being at the ſame time claimed to have originated antecedent to ſuch ſettlement or juriſdiction, ſhall, on the petition of either party to the Congreſs of the United States, be finally determined as near as may be, in the ſame manner as is before preſcribed for deciding diſputes reſpecting territorial juriſdiction between different States.

The United States in Congreſs aſſembled ſhall alſo have the ſole and excluſive right and power of regulating the alloy and value of coin ſtruck by their own authority, or by that of the reſpective States—fixing the ſtandard of weights and meaſures throughout the United States—regulating the trade and managing all affairs with the Indians not members of any of the States; *Provided*, that the legiſlative right of any State within its own limits be not infringed or violated—eſtabliſhing and regulating poſt-offices from one State to another throughout all the United States, and exacting ſuch poſtage on the papers paſſing through the ſame as may be requiſite to defray the expences of the ſaid office—appointing all officers of the land forces in the ſervice of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commiſſioning all officers whatever in the ſervice of the United States—making rules for the government and regulation of the ſaid land and naval forces, and directing their operations.

The United States in Congreſs aſſembled ſhall have authority to appoint a committee to ſit in the receſs of Congreſs, to be denominated "a committee of the States," and to conſiſt of one delegate from each State, and to appoint ſuch other committees and civil officers as may be neceſſary for managing the general affairs of the United States, under their direction—to appoint one of their number to preſide, *provided* that no perſon be allowed to ſerve in the office of preſident more than one year in any term of three years—to aſcertain the neceſſary ſums of money to be raiſed for the ſervice of the United States, and to appropriate and apply the ſame for defraying the public expences—to borrow money or emit bills on the credit of the United States, tranſmitting every half year to the reſpective States an account of the ſums of money ſo borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requiſitions from each State for its quota, in proportion to the number of white inhabitants in ſuch State; which requiſition ſhall be binding, and thereupon the legiſlature of each State ſhall appoint the regimental officers, raiſe the men, and cloathe, arm and equip them in a ſoldier-like manner, at the expence of the United States; and the officers and men ſo cloathed, armed and equipped, ſhall march to the place appointed, and within the time agreed on by the United States in Congreſs aſſembled: But if the United States in Congreſs aſſembled ſhall on conſideration of circumſtances, judge proper that any State ſhould not raiſe men, or ſhould raiſe a ſmaller number than its quota, and that any other State ſhould raiſe a greater number of men than the quota thereof, ſuch extra number ſhall be raiſed, officered, cloathed, armed and equipped in the ſame manner as the quota of ſuch State, unleſs the legiſlature of ſuch State ſhall judge that ſuch extra number cannot be ſafely ſpared out of the ſame; in which caſe they ſhall raiſe, officer, cloathe, arm and equip as many of ſuch extra number as they judge can be ſafely ſpared. And the officers and men ſo cloathed, armed and

equipped

equipped ſhall march to the place appointed and within the time agreed on by the United States in Congreſs aſſembled.

The United States in Congreſs aſſembled ſhall never engage in a war nor grant letters of marque and repriſal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor aſcertain the ſums and expences neceſſary for the defence and welfare of the United States, or any of them; nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of veſſels of war to be built or purchaſed, or the number of land or ſea forces to be raiſed, nor appoint a commander in chief of the army or navy, unleſs nine ſtates aſſent to the ſame; nor ſhall a queſtion on any other point, except for adjourning from day to day, be determined, unleſs by the votes of a majority of the United States in Congreſs aſſembled.

The Congreſs of the United States ſhall have power to adjourn to any time within the year, and to any place within the United States, ſo that no period of adjournment be for a longer duration than the ſpace of ſix months, and ſhall publiſh the journal of their proceedings monthly, except ſuch parts thereof relating to treaties, alliances or military operations, as in their judgment require ſecreſy; and the yeas and nays of the delegates of each State on any queſtion ſhall be entered on the journal, when it is deſired by any delegate; and the delegates of a State, or any of them, at his or their requeſt, ſhall be furniſhed with a tranſcript of the ſaid journal, except ſuch parts as are above excepted, to lay before the Legiſlatures of the ſeveral States.

Article X. The committee of the States, or any nine of them, ſhall be authoriſed to execute, in the receſs of Congreſs, ſuch of the powers of Congreſs as the United States in Congreſs aſſembled by the conſent of nine States ſhall from time to time think expedient to veſt them with; *provided*, that no power be delegated to the ſaid committee, for the exerciſe of which, by the articles of confederation, the voice of nine States in the Congreſs of the United States aſſembled is requiſite.

Article XI. Canada acceding to this confederation, and joining in the meaſures of the United States, ſhall be admitted into and entitled to all the advantages of this Union: But no other colony ſhall be admitted into the ſame unleſs ſuch admiſſion be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed, and debts contracted by or under the authority of Congreſs, before the aſſembling of the United States, in purſuance of the preſent confederation, ſhall be deemed and conſidered as a charge againſt the United States, for payment and ſatisfaction whereof the ſaid United States and the public faith are hereby ſolemnly pledged.

Article XIII. Every State ſhall abide by the determinations of the United States in Congreſs aſſembled on all queſtions which by this confederation are ſubmitted to them. And the articles of this confederation ſhall be inviolably obſerved by every State, and the Union ſhall be perpetual; nor ſhall any alteration at any time hereafter be made in any of them; unleſs ſuch alteration be agreed to in a Congreſs of the United States, and be afterwards confirmed by the legiſlatures of every State.

THESE articles ſhall be propoſed to the Legiſlatures of all the United States, to be conſidered, and if approved of by them, they are adviſed to authoriſe their Delegates to ratify the ſame in the Congreſs of the United States; which being done, the ſame ſhall become concluſive.

By order of Congreſs.

HENRY LAURENS, Preſident.

A CONSTITUTION OR FRAME OF GOVERNMENT, FOR THE COMMONWEALTH of MASSACHUSETTS.

PREAMBLE.

THE end of the inſtitution, maintenance and adminiſtration of government, is to ſecure the exiſtence of the body-politic; to protect it; and to furniſh the individuals who compoſe it, with the power of enjoying, in ſafety and tranquility, their natural rights, and the bleſſings of life: And whenever theſe great objects are not obtained, the people have a right to alter the government, and to take meaſures neceſſary for their ſafety, proſperity and happineſs.

The body-politic is formed by a voluntary aſſociation of individuals: It is a ſocial compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all ſhall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Conſtitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his ſecurity in them.

WE, therefore, the people of *Maſſachuſetts*, acknowledging, with grateful hearts, the goodneſs of the Great Legiſlature of the Univerſe, in affording us, in the courſe of his providence, an opportunity, deliberately and peaceably, without fraud, violence, or ſurprize, of entering into an original, explicit, and ſolemn compact with each other; and of forming a new Conſtitution of Civil Government, for ourſelves and poſterity; and devoutly emploring his direction in ſo intereſting a deſign,—DO agree upon, ordain and eſtabliſh, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

PART THE FIRST.

A DECLARATION of the RIGHTS of the Inhabitants of the COMMONWEALTH of *MASSACHUSETTS*.

ART. I. ALL men are born free and equal, and have certain, natural, eſſential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, poſſeſſing, and protecting property; in fine, that of ſeeking and obtaining their ſafety and happineſs.

II. It is the right as well as the duty of all men in ſociety, publicly, and at ſtated ſeaſons, to worſhip the SUPREME BEING, the great creator and preſerver of the univerſe. And no ſubject ſhall be hurt, moleſted, or reſtrained, in his perſon, liberty or eſtate, for worſhiping GOD in the manner and ſeaſon moſt agreeable to the dictates of his own conſcience; or for his religious profeſſion or ſentiments; provided he doth not diſturb the public peace, or obſtruct others in their religious worſhip.

III. As

III. As the happineſs of a people, and the good order and preſervation of civil government, eſſentially depend upon piety, religion and morality; and as theſe cannot be generally diffuſed through a community, but by the inſtitution of the public worſhip of GOD, and of public inſtructions in piety, religion and morality: Therefore, to promote their happineſs, and to ſecure the good order and preſervation of their government, the people of this Commonwealth have a right to inveſt their Legiſlature with power to authorize and require, and the Legiſlature ſhall, from time to time, authorize and require, the ſeveral towns, pariſhes, precincts, and other bodies politic, or religious ſocieties, to make ſuitable proviſion, at their own expence, for the inſtitution of the public worſhip of GOD, and for the ſupport and maintenance of public Proteſtant teachers of piety, religion and morality, in all caſes where ſuch proviſion ſhall not be made voluntarily.

And the people of this Commonwealth have alſo a right to, and do, inveſt their Legiſlature with authority to enjoin upon all the ſubjects an attendance upon the inſtructions of the public teachers aforeſaid, at ſtated times and ſeaſons, if there be any on whoſe inſtructions they can conſcientiouſly and conveniently attend.

Provided notwithſtanding, That the ſeveral towns, pariſhes, precincts, and other bodies-politic, or religious ſocieties, ſhall, at all times, have the excluſive right of electing their public teachers, and of contracting with them for their ſupport and maintenance.

And all monies paid by the ſubject to the ſupport of public worſhip, and of the public teachers aforeſaid, ſhall, if he require it, be uniformly applied to the ſupport of the public teacher or teachers of his own religious ſect or denomination, provided there be any on whoſe inſtructions he attends; otherwiſe it may be paid towards the ſupport of the teacher or teachers of the pariſh or precinct in which the ſaid monies are raiſed.

And every denomination of Chriſtians, demeaning themſelves peaceably, and as good ſubjects of the Commonwealth, ſhall be equally under the protection of the law: And no ſubordination of any one ſect or denomination to another ſhall ever be eſtabliſhed by law.

IV. The people of this Commonwealth have the ſole and excluſive right of governing themſelves as a free, ſovereign and independent State; and do, and forever hereafter ſhall, exerciſe and enjoy every power, juriſdiction and right, which is not, or may not hereafter, be by them expreſsly delegated to the United States of *America* in Congreſs aſſembled.

V. All power reſiding originally in the people, and being derived from them, the ſeveral magiſtrates and officers of government, veſted with authority, whether legiſlative, executive, or judicial, are their ſubſtitutes and agents, and are at all times accountable to them.

VI. No man, nor corporation, or aſſociation of men, have any other title to obtain advantages, or particular and excluſive privileges diſtinct from thoſe of the community, than what ariſes from the conſideration of ſervices rendered to the public; and this title being in nature neither hereditary, nor tranſmiſſible to children, or deſcendants, or relations by blood—the idea of a man born a magiſtrate, lawgiver, or judge, is abſurd and unnatural.

VII. Government is inſtituted for the common good; for the protection, ſafety, proſperity and happineſs of the people; and not for the profit, honor, or private intereſt of any one man, family, or claſs of men: Therefore, the people alone have an inconteſtible, unalienable, and indefeaſible right to inſtitute government; and to reform, alter, or totally change the ſame, when their protection, ſafety, proſperity and happineſs require it.

VIII. In order to prevent thoſe, who are veſted with authority, from becoming oppreſſors, the people have a right, at ſuch periods, and in ſuch manner as they ſhall eſtabliſh by their frame of government, to cauſe their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX. All

IX. All elections ought to be free ; and all the inhabitants of this Commonwealth, having ſuch qualifications as they ſhall eſtabliſh by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the ſociety, has a right to be protected by it in the enjoyment of his life, liberty and property, according to ſtanding laws. He is obliged, conſequently, to contribute his ſhare to the expence of this protection ; to give his perſonal ſervice, or an equivalent, when neceſſary : But no part of the property of any individual, can, with juſtice, be taken from him, or applied to public uſes, without his own conſent, or that of the repreſentative body of the people : In fine, the people of this Commonwealth are not coutroulable by any other laws than thoſe to which their conſtitutional repreſentative body have given their conſent. And whenever the public exigencies require, that the property of any individual ſhould be appropriated to public uſes, he ſhall receive a reaſonable compenſation therefor.

XI. Every ſubject of the Commonwealth ought to find a certain remedy, by having recourſe to the laws, for all injuries or wrongs which he may receive in his perſon, property, or character. He ought to obtain right and juſtice freely, and without being obliged to purchaſe it ; compleatly, and without any denial ; promptly, and without delay ; conformably to the laws.

XII. No ſubject ſhall be held to anſwer for any crime or offence, until the ſame is fully and plainly, ſubſtantially and formally, deſcribed to him ; or be compelled to accuſe, or furniſh evidence againſt himſelf. And every ſubject ſhall have a right to produce all proofs that may be favourable to him ; to meet the witneſſes againſt him face to face, and to be fully heard in his defence by himſelf, or his council, at his election. And no ſubject ſhall be arreſted, impriſoned, deſpoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or eſtate, but by the judgment of his peers, or the law of the land.

And the Legiſlature ſhall not make any law, that ſhall ſubject any perſon to a capital or infamous puniſhment, excepting for the government of the army and navy, without trial by jury.

XIII. In criminal proſecutions, the verification of facts, in the vicinity where they happen, is one of the greateſt ſecurities of the life, liberty and property of the citizen.

XIV. Every ſubject has a right to be ſecure from all unreaſonable ſearches and ſeizures of his perſon, his houſes, his papers, and all his poſſeſſions. All warrants, therefore, are contrary to this right, if the cauſe or foundation of them be not previouſly ſupported by oath or affirmation ; and if the order in the warrant to a civil officer, to make ſearch in ſuſpected places, or to arreſt one or more ſuſpected perſons, or to ſeize their property, be not accompanied with a ſpecial deſignation of the perſons or objects of ſearch, arreſt, or ſeizure : And no warrant ought to be iſſued but in caſes, and with the formalities, preſcribed by the laws.

XV. In all controverſies concerning property, and in all ſuits between two or more perſons, except in caſes in which it has heretofore been otherways uſed and practiſed, the parties have a right to a trial by a jury ; and this method of procedure ſhall be held ſacred, unleſs, in cauſes ariſing on the high ſeas, and ſuch as relate to mariners wages, the Legiſlature ſhall hereafter find it neceſſary to alter it.

XVI. The liberty of the preſs is eſſential to the ſecurity of freedom in a State ; it ought not, therefore, to be reſtrained in this Commonwealth.

XVII. The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the conſent of the Legiſlature : And the military power ſhall always be held in an exact ſubordination to the civil authority, and be governed by it.

XVIII. A frequent recurrence to the fundamental principles of the conſtitu-

tion

tion, and a conſtant adherence to thoſe of piety, juſtice, moderation, temperance, induſtry and frugality, are abſolutely neceſſary to preſerve the advantages of liberty, and to maintain a free government. The people ought, conſequently, to have a particular attention to all thoſe principles, in the choice of their officers and repreſentatives: And they have a right to require of their lawgivers and magiſtrates, an exact and conſtant obſervance of them, in the formation and execution of the laws neceſſary for the good adminiſtration of the Commonwealth.

XIX. The people have a right, in an orderly and peaceable manner, to aſſemble to conſult upon the common good; give inſtructions to their repreſentatives; and to requeſt of the Legiſlative body, by the way of addreſſes, petitions, or remonſtrances, redreſs of the wrongs done them, and of the grievances they ſuffer.

XX. The power of ſuſpending the laws, or the execution of the laws, ought never to be exerciſed but by the Legiſlature, or by authority derived from it, to be exerciſed in ſuch particular caſes only as the Legiſlature ſhall expreſsly provide for.

XXI. The freedom of deliberation, ſpeech and debate, in either houſe of the Legiſlature, is ſo eſſential to the rights of the people, that it cannot be the foundation of any accuſation or proſecution, action or complaint, in any other court or place whatſoever.

XXII. The Legiſlature ought frequently to aſſemble for the redreſs of grievances; for correcting, ſtrengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII. No ſubſidy, charge, tax, impoſt, or duties, ought to be eſtabliſhed, fixed, laid, or levied, under any pretext whatſoever, without the conſent of the people, or their repreſentatives in the Legiſlature.

XXIV. Laws made to puniſh for actions done before the exiſtence of ſuch laws, and which have not been declared crimes by preceding laws, are unjuſt, oppreſſive, and inconſiſtent with the fundamental principles of a free government.

XXV. No ſubject ought, in any caſe, or in any time, to be declared guilty of treaſon or felony by the Legiſlature.

XXVI. No magiſtrate, or court of law, ſhall demand exceſſive bail or ſureties; impoſe exceſſive fines, or inflict cruel or unuſual puniſhments.

XXVII. In time of peace, no ſoldier ought to be quartered in any houſe, without the conſent of the owner; and in time of war, ſuch quarters ought not to be made but by the civil magiſtrate, in a manner ordained by the Legiſlature.

XXVIII. No perſon can in any caſe be ſubjected to law-martial, or to any penalties or pains, by virtue of that law, except thoſe employed in the army and navy, and except the militia in actual ſervice, but by authority of the Legiſlature.

XXIX. It is eſſential to the preſervation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and adminiſtration of juſtice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit: It is therefore not only the beſt policy, but for the ſecurity of the rights of the people, and of every citizen, that the Judges of the Supreme Judicial Court ſhould hold their offices as long as they behave themſelves well; and that they ſhould have honourable ſalaries aſcertained and eſtabliſhed by ſtanding laws.

XXX. In the government of this Commonwealth, the legiſlative department ſhall never exerciſe the executive and judicial powers, or either of them: The executive ſhall never exerciſe the legiſlative and judicial powers, or either of them: The judicial ſhall never exerciſe the legiſlative and executive powers, or either of them; to the end it may be a government of laws and not of men.

PART THE SECOND.

THE FRAME OF GOVERNMENT.

THE people inhabiting the territory formerly called the Province of *Maſſachuſetts-Bay*, do hereby ſolemnly and mutually agree with each other, to form themſelves into a free, ſovereign and independent body-politic, by the name of THE COMMONWEALTH OF *MASSACHUSETTS*.

CHAPTER I.

THE LEGISLATIVE POWER.

SECTION I.

THE GENERAL COURT.

ART. I. THE department of legiſlation ſhall be formed by two branches, a *Senate* and *Houſe of Repreſentatives*: Each of which ſhall have a negative on the other.

The legiſlative body ſhall aſſemble every year on the laſt Wedneſday in *May*, and at ſuch other times as they ſhall judge neceſſary; and ſhall diſſolve and be diſſolved on the day next preceding the ſaid laſt Wedneſday in *May*, and ſhall be ſtiled, THE GENERAL COURT OF MASSACHUSETTS.

II. No bill or reſolve of the Senate or Houſe of Repreſentatives ſhall become a law, and have force as ſuch, until it ſhall have been laid before the Governor for his reviſal: And if he, upon ſuch reviſion, appprove thereof, he ſhall ſignify his approbation by ſigning the ſame. But if he have any objection to the paſſing of ſuch bill or reſolve, he ſhall return the ſame, together with his objections thereto, in writing, to the Senate or Houſe of Repreſentatives, in which ſoever the ſame ſhall have originated; who ſhall enter the objections ſent down by the Governor, at large, on their records, and proceed to re-conſider the ſaid bill or reſolve: But if after ſuch re-conſideration, two thirds of the ſaid Senate or Houſe of Repreſentatives, ſhall, notwithſtanding the ſaid objections, agree to paſs the ſame, it ſhall, together with the objections, be ſent to the other branch of the legiſlature, where it ſhall alſo be re-conſidered, and if approved by two-thirds of the members preſent, it ſhall have the force of a law: But in all ſuch caſes, the votes of both Houſes ſhall be determined by yeas and nays; and the names of the perſons voting for, or againſt the ſaid bill or reſolve, ſhall be entered upon the public records of the Commonwealth.

And in order to prevent unneceſſary delays, if any bill or reſolve ſhall not be returned by the Governor within five days after it ſhall have been preſented, the ſame ſhall have the force of a law.

III. The General Court ſhall forever have full power and authority to erect and conſtitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, proceſſes, plaints, actions, matters, cauſes and things whatſoever, ariſing or happening within the Commonwealth, or between or concerning perſons inhabiting or reſiding, or brought within the ſame; whether the ſame be criminal or civil, or whether the ſaid crimes be capital or not capital, and whether the ſaid pleas be real, perſonal or mixt; and for the awarding and making out of execution thereupon: To which courts and judicatories are hereby given and granted full power and authority, from time to time, to adminiſter oaths or affirmations, for the better diſcovery of truth in any matter in controverſy or depending before them.

IV. And further, full power and authority are hereby given and granted to the ſaid General Court, from time to time, to make, ordain and eſtabliſh all manner of wholeſome and reaſonable orders, laws, ſtatutes and ordinances, directions and inſtructions, either with penalties or without; ſo as the ſame be not

repugnant or contrary to this Conſtitution, as they ſhall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the ſubjects of the ſame, and for the neceſſary ſupport and defence of the government thereof; and to name and ſettle annually, or provide by fixed laws, for the naming and ſettling all civil officers within the ſaid Commonwealth; the election and conſtitution of whom are not hereafter in this Form of Government otherwiſe provided for; and to ſet forth the ſeveral duties, powers and limits, of the ſeveral civil and military officers of this Commonwealth, and the forms of ſuch oaths or affirmations as ſhall be reſpectively adminiſtered unto them for the execution of their ſeveral offices and places, ſo as the ſame be not repugnant or contrary to this Conſtitution; and to impoſe and levy proportional and reaſonable aſſeſſments, rates and taxes, upon all the inhabitants of, and perſons reſident, and eſtates lying within the ſaid Commonwealth; and alſo to impoſe and levy reaſonable duties and exciſes upon any produce, goods, wares, merchandize and commodities whatſoever, brought into, produced, manufactured, or being within the ſame; to be iſſued and diſpoſed of by warrant, under the hand of the Governor of this Commonwealth, for the time being, with the advice and conſent of the Council, for the public ſervice, in the neceſſary defence and ſupport of the government of the ſaid Commonwealth, and the protection and preſervation of the ſubjects thereof, according to ſuch acts as are or ſhall be in force within the ſame.

And while the public charges of government, or any part thereof, ſhall be aſſeſſed on polls and eſtates in the manner that has hitherto been practiced; in order that ſuch aſſeſſments may be made with equality, there ſhall be a valuation of eſtates within the Commonwealth taken anew once in every ten years, at the leaſt, and as much oftner as the General Court ſhall order.

CHAPTER I.

SECTION II.

SENATE.

ART. I. THERE ſhall be annually elected by the freeholders and other inhabitants of this Commonwealth, qualified as in this Conſtitution is provided, forty perſons to be Counſellors and Senators for the year enſuing their election; to be choſen by the inhabitants of the diſtricts, into which the Commonwealth may from time to time be divided by the General Court for that purpoſe: And the General Court, in aſſigning the numbers to be elected by the reſpective diſtricts, ſhall govern themſelves by the proportion of the public taxes paid by the ſaid diſtricts; and timely make known to the inhabitants of the Commonwealth, the limits of each diſtrict, and the number of Counſellors and Senators to be choſen therein; provided that the number of ſuch diſtricts ſhall be never leſs than thirteen; and that no diſtrict be ſo large as to entitle the ſame to chooſe more than ſix Senators.

And the ſeveral counties in this Commonwealth ſhall, until the General Court ſhall determine it neceſſary to alter the ſaid diſtricts, be diſtricts for the choice of Counſellors and Senators (except that the counties of *Dukes-County* and *Nantucket* ſhall form one diſtrict for that purpoſe) and ſhall elect the following number for Counſellors and Senators, *viz.*

Suffolk,	Six.	*York*,	Two.
Eſſex,	Six.	*Duke's-County* and *Nantucket*,	One.
Middleſex,	Five.	*Worceſter*,	Five.
Hampſhire,	Four.	*Cumberland*,	One.
Plymouth,	Three.	*Lincoln*,	One.
Barnſtable,	One.	*Berkſhire*,	Two.
Briſtol,	Three.		

II. The

II. The Senate ſhall be the firſt branch of the legiſlature; and the Senators ſhall be choſen in the following manner, *viz.* There ſhall be a meeting on the firſt Monday in *April* annually, forever, of the inhabitants of each town in the ſeveral counties of this Commonwealth; to be called by the ſelectmen, and warned in due courſe of law, at leaſt ſeven days before the firſt Monday in *April*, for the purpoſe of electing perſons to be Senators and Counſellors: And at ſuch meetings every male inhabitant of twenty-one years of age and upwards, having a freehold eſtate within the Commonwealth, of the annual income of three pounds, or any eſtate of the value of ſixty pounds, ſhall have a right to give in his vote for the Senators for the diſtrict of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "Inhabitant," in this Conſtitution, every perſon ſhall be conſidered as an inhabitant, for the purpoſe of electing and being elected into any office or place within this State, in that town, diſtrict or plantation where he dwelleth, or hath his home.

The ſelectmen of the ſeveral towns ſhall preſide at ſuch meetings impartially; and ſhall receive the votes of all the inhabitants of ſuch towns preſent and qualified to vote for Senators, and ſhall ſort and count them in open town-meeting, and in preſence of the town-clerk, who ſhall make a fair record, in preſence of the ſelectmen, and in open town-meeting, of the name of every perſon voted for, and of the number of votes againſt his name; and a fair copy of this record ſhall be atteſted by the ſelectmen and the town-clerk, and ſhall be ſealed up, directed to the Secretary of the Commonwealth for the time being, with a ſuperſcription, expreſſing the purport of the contents thereof, and delivered by the town-clerk of ſuch towns to the ſheriff of the county in which ſuch town lies, thirty days at leaſt before the laſt Wedneſday in *May*, annually; or it ſhall be delivered into the Secretary's office ſeventeen days at leaſt before the ſaid laſt Wedneſday in *May*; and the ſheriff of each county ſhall deliver all ſuch certificates by him received into the Secretary's office, ſeventeen days before the ſaid laſt Wedneſday in *May*.

And the inhabitants of plantations unincorporated, qualified as this Conſtitution provides, who are or ſhall be empowered and required to aſſeſs taxes upon themſelves toward the ſupport of government, ſhall have the ſame privilege of voting for Counſellors and Senators in the plantations where they reſide, as town inhabitants have in their reſpective towns; and the plantation-meetings for that purpoſe ſhall be held annually on the ſame firſt Monday in *April*, at ſuch place in the plantations reſpectively as the aſſeſſors thereof ſhall direct; which aſſeſſors ſhall have like authority for notifying the electors, collecting and returning the votes, as the ſelectmen and town-clerks have in their ſeveral towns, by this Conſtitution. And all other perſons living in places unincorporated, (qualified as aforeſaid) who ſhall be aſſeſſed to the ſupport of government by the aſſeſſors of an adjacent town, ſhall have the privilege of giving in their votes for Counſellors and Senators, in the town where they ſhall be aſſeſſed, and be notified of the place of meeting by the ſelectmen of the town where they ſhall be aſſeſſed, for that purpoſe, accordingly.

III. And that there may be a due convention of Senators on the laſt Wedneſday in *May*, annually, the Governor, with five of the Council, for the time being, ſhall, as ſoon as may be, examine the returned copies of ſuch records; and fourteen days before the ſaid day he ſhall iſſue his ſummons to ſuch perſons as ſhall appear to be choſen by a majority of voters, to attend on that day, and take their ſeats accordingly: *Provided nevertheleſs*, That for the firſt year the ſaid returned copies ſhall be examined by the Preſident and five of the Council of the former conſtitution of government; and the ſaid Preſident ſhall in like manner iſſue his ſummons to the perſons ſo elected, that they may take their ſeats as aforeſaid.

IV. The Senate ſhall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the Conſtitution; and ſhall, on the ſaid laſt Wednelday in *May*, annually, determine and declare who are elected by each diſtrict to be Senators by a majority of votes: And in caſe there ſhall not appear to be the full number of Senators returned elected by a majority of votes

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And the inhabitants of plantations unincorporated, qualified as this Conſtitution provides, who are or ſhall be empowered and required to aſſeſs taxes upon themſelves toward the ſupport of government, ſhall have the ſame privilege of voting for Counſellors and Senators in the plantations where they reſide, as town inhabitants have in their reſpective towns; and the plantation-meetings for that purpoſe ſhall be held annually on the ſame firſt Monday in *April*, at ſuch place in the plantations reſpectively as the aſſeſſors thereof ſhall direct; which aſſeſſors ſhall have like authority for notifying the electors, collecting and returning the votes, as the ſelectmen and town-clerks have in their ſeveral towns, by this Conſtitution. And all other perſons living in places unincorporated, (qualified as aforeſaid) who ſhall be aſſeſſed to the ſupport of government by the aſſeſſors of an adjacent town, ſhall have the privilege of giving in their votes for Counſellors and Senators, in the town where they ſhall be aſſeſſed, and be notified of the place of meeting by the ſelectmen of the town where they ſhall be aſſeſſed, for that purpoſe, accordingly.

III. And that there may be a due convention of Senators on the laſt Wedneſday in *May*, annually, the Governor, with five of the Council, for the time being, ſhall, as ſoon as may be, examine the returned copies of ſuch records; and fourteen days before the ſaid day he ſhall iſſue his ſummons to ſuch perſons as ſhall appear to be choſen by a majority of voters, to attend on that day, and take their ſeats accordingly: *Provided nevertheleſs*, That for the firſt year the ſaid returned copies ſhall be examined by the Preſident and five of the Council of the former conſtitution of government; and the ſaid Preſident ſhall in like manner iſſue his ſummons to the perſons ſo elected, that they may take their ſeats as aforeſaid.

IV. The Senate ſhall be the final judge of the elections, returns and qualifications of their own members, as pointed out in the Conſtitution; and ſhall, on the ſaid laſt Wednelday in *May*, annually, determine and declare who are elected by each diſtrict to be Senators by a majority of votes: And in caſe there ſhall not appear to be the full number of Senators returned elected by a majority of votes

votes for any diſtrict, the deficiency ſhall be ſupplied in the following manner, *viz.* The members of the Houſe of Repreſentatives, and ſuch Senators as ſhall be declared elected, ſhall take the names of ſuch perſons as ſhall be found to have the higheſt number of votes in ſuch diſtrict, and not elected, amounting to twice the number of Senators wanting, if there be ſo many voted for; and out of theſe, ſhall elect by ballot a number of Senators ſufficient to fill up the vacancies in ſuch diſtrict; and in this manner all ſuch vacancies ſhall be filled up in every diſtrict of the Commonwealth; and in like manner all vacancies in the Senate, ariſing by death, removal out of the State, or otherwiſe, ſhall be ſupplied as ſoon as may be after ſuch vacancies ſhall happen.

V. *Provided nevertheleſs*, That no perſon ſhall be capable of being elected as a Senator, who is not ſeized in his own right, of a freehold within this Commonwealth, of the value of three hundred pounds, at leaſt, or poſſeſſed of perſonal eſtate to the value of ſix hundred pounds at leaſt, or of both to the amount of the ſame ſum, and who has not been an inhabitant of this Commonwealth for the ſpace of five years immediately preceding his election; and at the time of his election, he ſhall be an inhabitant in the diſtrict for which he ſhall be choſen.

VI. The Senate ſhall have power to adjourn themſelves, provided ſuch adjournments do not exceed two days at a time.

VII. The Senate ſhall chooſe its own Preſident, appoint its own officers, and determine its own rules of proceedings.

VIII. The Senate ſhall be a court with full authority to hear and determine all impeachments made by the Houſe of Repreſentatives, againſt any officer or officers of the Commonwealth, for miſconduct and mal-adminiſtration in their offices. But previous to the trial of every impeachment, the members of the Senate ſhall reſpectively be ſworn, truly and impartially to try and determine the charge in queſtion, according to evidence. Their judgment, however, ſhall not extend further than to removal from office, and diſqualification to hold or enjoy any place of honor, truſt, or profit, under this Commonwealth: But the party ſo convicted, ſhall be nevertheleſs liable to indictment, trial, judgment and puniſhment, according to the laws of the land.

IX. Not leſs than ſixteen members of the Senate ſhall conſtitute a quorum for doing buſineſs.

CHAPTER I.

SECTION III.

HOUSE OF REPRESENTATIVES.

ART. I. THERE ſhall be in the Legiſlature of this Commonwealth, a repreſentation of the people, annually elected, and founded upon the principle of equality.

II. And in order to provide for a repreſentation of the citizens of this Commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty rateable polls, may elect one Repreſentative: every corporate town, containing three hundred and ſeventy-five rateable polls, may elect two Repreſentatives; every corporate town, containing ſix hundred rateable polls, may elect three Repreſentatives; and proceeding in that manner, making two hundred and twenty-five rateable polls the mean increaſing number for every additional Repreſentative.

Provided nevertheleſs, That each town now incorporated, not having one hundred and fifty rateable polls, may elect one Repreſentative: But no place ſhall hereafter be incorporated with the privilege of electing a Repreſentative, unleſs there are within the ſame one hundred and fifty rateable polls.

And

And the Houſe of Repreſentatives ſhall have power from time to time to impoſe fines upon ſuch towns as ſhall neglect to chooſe and return members to the ſame, agreeably to this Conſtitution.

The expences of travelling to the General Aſſembly, and returning home, once in every ſeſſion and no more, ſhall be paid by the government, out of the public treaſury, to every member who ſhall attend as ſeaſonably as he can, in the judgment of the Houſe, and does not depart without leave.

III. Every member of the Houſe of Repreſentatives ſhall be choſen by written votes; and for one year at leaſt next preceding his election, ſhall have been an inhabitant of, and have been ſeized in his own right of a freehold of the value of one hundred pounds within the town he ſhall be choſen to repreſent, or any rateable eſtate to the value of two hundred pounds; and he ſhall ceaſe to repreſent the ſaid town immediately on his ceaſing to be qualified as aforeſaid.

IV. Every male perſon, being twenty-one years of age, and reſident in any particular town in this Commonwealth for the ſpace of one year next preceding, having a freehold eſtate within the ſame town, of the annual income of three pounds, or any eſtate of the value of ſixty pounds, ſhall have a right to vote in the choice of a Repreſentative, or Repreſentatives for the ſaid town.

V. The members of the Houſe of Repreſentatives ſhall be choſen annually in the month of *May*, ten days at leaſt before the laſt Wedneſday of that month.

VI. The Houſe of Repreſentatives ſhall be the Grand Inqueſt of this Commonwealth; and all impeachments made by them, ſhall be heard and tried by the Senate.

VII. All money-bills ſhall originate in the Houſe of Repreſentatives; but the Senate may propoſe or concur with amendments, as on other bills.

VIII. The Houſe of Repreſentatives ſhall have power to adjourn themſelves; provided ſuch adjournment ſhall not exceed two days at a time.

IX. Not leſs than ſixty members of the Houſe of Repreſentatives ſhall conſtitute a quorum for doing buſineſs.

X. The Houſe of Repreſentatives ſhall be the judge of the returns, elections and qualifications of its own members, as pointed out in the Conſtitution; ſhall chuſe their own Speaker; appoint their own officers, and ſettle the rules and orders of proceeding in their own Houſe: They ſhall have authority to puniſh by impriſonment, every perſon, not a member, who ſhall be guilty of diſreſpect to the Houſe, by any diſorderly or contemptuous behaviour in its preſence; or who, in the town where the General Court is ſitting, and during the time of its ſitting, ſhall threaten harm to the body or eſtate of any of its members, for any thing ſaid or done in the Houſe; or who ſhall aſſault any of them therefor; or who ſhall aſſault or arreſt any witneſs or other perſon ordered to attend the Houſe, in his way in going or returning; or who ſhall reſcue any perſon arreſted by the order of the Houſe.

And no member of the Houſe of Repreſentatives ſhall be arreſted, or held to bail on mean proceſs, during his going unto, returning from, or his attending the General Aſſembly.

XI. The Senate ſhall have the ſame powers in the like caſes; and the Governor and Council ſhall have the ſame authority to puniſh in like caſes. *Provided*, that no impriſonment on the warrant or order of the Governor, Council, Senate, or Houſe of Repreſentatives, for either of the above-deſcribed offences be for a term exceeding thirty days.

And the Senate and Houſe of Repreſentatives may try and determine all caſes where their rights and privileges are concerned, and which, by the Conſtitution, they have authority to try and determine, by committees of their own members, or in ſuch other way as they may reſpectively think beſt.

CHAPTER II.

EXECUTIVE POWER.

SECTION I.

GOVERNOR.

ART. I. THERE ſhall be a Supreme Executive Magiſtrate, who ſhall be ſtiled, THE GOVERNOR OF THE COMMONWEALTH OF *MASSACHUSETTS*; and whoſe title ſhall be—HIS EXCELLENCY.

II. The Governor ſhall be choſen annually; and no perſon ſhall be eligible to this office, unleſs at a time of his election he ſhall have been an inhabitant of this Commonwealth for ſeven years next preceding; and unleſs he ſhall, at the ſame time, be ſeized in his own right of a freehold within the Commonwealth, of the value of one thouſand pounds; and unleſs he ſhall declare himſelf to be of the chriſtian religion.

III. Thoſe perſons who ſhall be qualified to vote for Senators and Repreſentatives, within the ſeveral towns of this Commonwealth, ſhall, at a meeting to be called for that purpoſe, on the firſt Monday of *April* annually, give in their votes for a Governor, to the ſelectmen, who ſhall preſide at ſuch meetings; and the Town-Clerk, in the preſence and with the aſſiſtance of the ſelectmen, ſhall, in open town-meeting, ſort and count the votes, and form a liſt of the perſons voted for, with the number of votes for each perſon againſt his name; and ſhall make a fair record of the ſame in the town books, and a public declaration thereof in the ſaid meeting; and ſhall, in the preſence of the inhabitants, ſeal up copies of the ſaid liſt, atteſted by him and the ſelectmen, and tranſmit the ſame to the ſheriff of the county, thirty days at leaſt before the laſt Wedneſday in *May*; and the ſheriff ſhall tranſmit the ſame to the Secretary's office, ſeventeen days at leaſt before the ſaid laſt Wedneſday in *May*; or the ſelectmen may cauſe returns of the ſame to be made to the office of the Secretary of the Commonwealth, ſeventeen days at leaſt before the ſaid day; and the Secretary ſhall lay the ſame before the Senate and Houſe of Repreſentatives, on the laſt Wedneſday in *May*, to be by them examined: And in caſe of an election by a majority of all the votes returned, the choice ſhall be by them declared and publiſhed: But if no perſon ſhall have a majority of votes, the Houſe of Repreſentatives ſhall, by ballot, elect two out of four perſons who had the higheſt numbers of votes, if ſo many ſhall have been voted for; but, if otherwiſe, out of the number voted for; and make return to the Senate of the two perſons ſo elected; on which the Senate ſhall proceed by ballot to elect one, who ſhall be declared Governor.

IV. The Governor ſhall have authority, from time to time, at his diſcretion, to aſſemble and call together the Counſellors of this Commonwealth for the time being; and the Governor, with the ſaid Counſellors, or five of them at leaſt, ſhall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, agreeably to the conſtitution and the laws of the land.

V. The Governor, with advice of Council, ſhall have full power and authority during the ſeſſion of the General Court, to adjourn or prorogue the ſame to any time the two Houſes ſhall deſire; and to diſſolve the ſame on the day next preceding the laſt Wedneſday in *May*; and, in the receſs of the ſaid Court, to prorogue the ſame from time to time, not exceeding ninety days in any one receſs; and to call it together ſooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth ſhall require the ſame: And in caſe of any infectious diſtemper prevailing in the place where the ſaid Court is next at any time to convene, or any other cauſe happening whereby danger may ariſe to the health or lives of the members from their attendance, he may direct the ſeſſion to be held at ſome other the moſt convenient place within the State.

And the Governor ſhall diſſolve the ſaid General Court on the day next preceding the laſt Wedneſday in *May*.

VI.

VI. In cases of disagreement between the two Houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the Governor, with advice of the Council, shall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he shall determine the public good shall require.

VII. The Governor of this Commonwealth for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel and pursue by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer by all fitting ways, enterprizes and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment or annoyance of this Commonwealth; and to use and exercise over the army and navy, and over the militia in actual service, the law-martial in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprize by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall, in a hostile manner, invade or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be intrusted with all these and other powers, incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exercised agreeably to the rules and regulations of the Constitution, and the laws of the land, and not otherwise.

Provided, That the said Governor shall not at any time hereafter, by virtue of any power by this Constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the General Court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State to which they cannot otherwise conveniently have access.

VIII. The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of Council: But no charter of pardon granted by the Governor, with advice of the Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

IX. All judicial officers, the Attorney-General, the Solicitor-General, all Sheriffs, Coroners, and Registers of Probate, shall be nominated and appointed by the Governor, by and with the advice and consent of the Council; and every such nomination shall be made by the Governor, and made at least seven days prior to such appointment.

X. The Captains and Subalterns of the militia, shall be elected by the written votes of the train-band and alarm-list of their respective companies, of twenty-one years of age and upwards: The field-officers of regiments shall be elected by the written votes of the Captains and Subalterns of their respective regiments: The Brigadiers shall be elected in like manner, by the field-officers of their respective brigades: And such officers so elected, shall be commissioned by the Governor, who shall determine their rank.

The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the Governor the officers elected.

The Major-Generals shall be appointed by the Senate and House of Representatives, each having a negative upon the other; and be commissioned by the Governor.

CHAPTER II.

EXECUTIVE POWER.

SECTION I.

GOVERNOR.

ART. I. THERE ſhall be a Supreme Executive Magiſtrate, who ſhall be ed, ſtyled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whoſe title ſhall be—HIS EXCELLENCY.

II. The Governor ſhall be choſen annually; and no perſon ſhall be eligible to this office, unleſs at a time of his election he ſhall have been an inhabitant of this Commonwealth for ſeven years next preceding; and unleſs he ſhall, at the ſame time, be ſeized in his own right of a freehold within the Commonwealth of the value of one thouſand pounds; and unleſs he ſhall declare himſelf to be of the chriſtian religion.

III. Thoſe perſons who ſhall be qualified to vote for Senators and Representatives, within the ſeveral towns of this Commonwealth, ſhall, at a meeting to be called for that purpoſe, on the firſt Monday of *April* annually, give in their votes for a Governor, to the ſelectmen, who ſhall preſide at ſuch meetings; and the Town-Clerk, in the preſence and with the aſſiſtance of the ſelectmen, ſhall, in open town-meeting, ſort and count the votes, and form a liſt of the perſons voted for, with the number of votes for each perſon againſt his name; and ſhall make a fair record of the ſame in the town books, and a public declaration thereof in the ſaid meeting; and ſhall, in the preſence of the inhabitants, ſeal up copies of the ſaid liſt, atteſted by him and the ſelectmen, and tranſmit the ſame to the ſheriff of the county, thirty days at leaſt before the laſt Wedneſday in *May*; and the ſheriff ſhall tranſmit the ſame to the Secretary's office, ſeventeen days at leaſt before the ſaid laſt Wedneſday in *May*; or the ſelectmen may cauſe returns of the ſame to be made to the office of the Secretary of the Commonwealth, ſeventeen days at leaſt before the ſaid day; and the Secretary ſhall lay the ſame before the Senate and Houſe of Repreſentatives, on the laſt Wedneſday in *May*, to be by them examined: And in caſe of an election by a majority of all the votes returned, the choice ſhall be by them declared and publiſhed: But if no perſon ſhall have a majority of votes, the Houſe of Repreſentatives ſhall, by ballot, elect two out of four perſons who had the higheſt numbers of votes, if ſo many ſhall have been voted for; but, if otherwiſe, out of the number voted for; and make return to the Senate of the two perſons ſo elected; on which the Senate ſhall proceed by ballot to elect one, who ſhall be declared Governor.

IV. The Governor ſhall have authority, from time to time, at his diſcretion, to aſſemble and call together the Counſellors of this Commonwealth for the time being; and the Governor, with the ſaid Counſellors, or five of them at leaſt, ſhall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, agreeably to the conſtitution and the laws of the land.

V. The Governor, with advice of Council, ſhall have full power and authority during the ſeſſion of the General Court, to adjourn or prorogue the ſame to any time the two Houſes ſhall deſire; and to diſſolve the ſame on the day next preceding the laſt Wedneſday in *May*; and, in the receſs of the ſaid Court, to prorogue the ſame from time to time, not exceeding ninety days in any one receſs; and to call it together ſooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth ſhall require the ſame: And in caſe of any infectious diſtemper prevailing in the place where the ſaid Court is next at any time to convene, or any other cauſe happening whereby danger may ariſe to the health or lives of the members from their attendance, he may direct the ſeſſion to be held at ſome other the moſt convenient place within the State.

And the Governor ſhall diſſolve the ſaid General Court on the day next preceding the laſt Wedneſday in *May*.

VI.

VI. In cafes of difagreement between the two Houfes, with regard to the neceſſity, expediency or time of adjournment, or prorogation, the Governor, with advice of the Council, ſhall have a right to adjourn or prorogue the General Court, not exceeding ninety days, as he ſhall determine the public good ſhall require.

VII. The Governor of this Commonwealth for the time being, ſhall be the commander in chief of the army and navy, and of all the military forces of the State, by ſea and land; and ſhall have full power by himſelf, or by any commander, or other officer or officers, from time to time, to train, inſtruct, exerciſe and govern the militia and navy; and for the ſpecial defence and ſafety of the Commonwealth, to aſſemble in martial array, and put in warlike poſture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, reſiſt, expel and purſue by force of arms, as well by ſea as by land, within or without the limits of this Commonwealth, and alſo to kill, ſlay and deſtroy, if neceſſary, and conquer by all fitting ways, enterprizes and means whatſoever, all and every ſuch perſon and perſons as ſhall, at any time hereafter, in a hoſtile manner, attempt or enterprize the deſtruction, invaſion, detriment or annoyance of this Commonwealth; and to uſe and exerciſe over the army and navy, and over the militia in actual ſervice, the law-martial in time of war or invaſion, and alſo in time of rebellion, declared by the legiſlature to exiſt, as occaſion ſhall neceſſarily require; and to take and ſurprize by all ways and means whatſoever, all and every ſuch perſon or perſons, with their ſhips, arms, ammunition and other goods, as ſhall, in a hoſtile manner, invade or attempt the invading, conquering, or annoying this Commonwealth; and that the Governor be intruſted with all theſe and other powers, incident to the offices of Captain-General and Commander in Chief, and Admiral, to be exerciſed agreeably to the rules and regulations of the Conſtitution, and the laws of the land, and not otherwiſe.

Provided, That the ſaid Governor ſhall not at any time hereafter, by virtue of any power by this Conſtitution granted, or hereafter to be granted to him by the legiſlature, tranſport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the ſame, without their free and voluntary conſent, or the conſent of the General Court; except ſo far as may be neceſſary to march or tranſport them by land or water for the defence of ſuch part of the State to which they cannot otherwiſe conveniently have acceſs.

VIII. The power of pardoning offences, except ſuch as perſons may be convicted of before the Senate by an impeachment of the Houſe, ſhall be in the Governor, by and with the advice of Council: But no charter of pardon granted by the Governor, with advice of the Council, before conviction, ſhall avail the party pleading the ſame, notwithſtanding any general or particular expreſſions contained therein, deſcriptive of the offence or offences intended to be pardoned.

IX. All judicial officers, the Attorney-General, the Solicitor-General, all Sheriffs, Coroners, and Regiſters of Probate, ſhall be nominated and appointed by the Governor, by and with the advice and conſent of the Council; and every ſuch nomination ſhall be made by the Governor, and made at leaſt ſeven days prior to ſuch appointment.

X. The Captains and Subalterns of the militia, ſhall be elected by the written votes of the train-band and alarm-liſt of their reſpective companies, of twenty-one years of age and upwards: The field-officers of regiments ſhall be elected by the written votes of the Captains and Subalterns of their reſpective regiments: The Brigadiers ſhall be elected in like manner, by the field-officers of their reſpective brigades: And ſuch officers ſo elected, ſhall be commiſſioned by the Governor, who ſhall determine their rank.

The legiſlature ſhall, by ſtanding laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the Governor the officers elected.

The Major-Generals ſhall be appointed by the Senate and Houſe of Repreſentatives, each having a negative upon the other; and be commiſſioned by the Governor.

And if the electors of Brigadiers, Field-Officers, Captains or Subalterns, ſhall neglect or refuſe to make ſuch elections, after being duly notified, according to the laws for the time being, then the Governor, with advice of Council, ſhall appoint ſuitable perſons to fill ſuch offices.

And no officer duly commiſſioned to command in the militia, ſhall be removed from his office, but by the addreſs of both Houſes to the Governor, or by fair trial in court-martial, purſuant to the laws of the Commonwealth for the time being.

The commanding officers of regiments ſhall appoint their Adjutants and Quarter-Maſters; the Brigadiers their Brigade Majors; and the Major-Generals their Aids; and the Governor ſhall appoint the Adjutant-General.

The Governor with advice of Council, ſhall appoint all officers of the Continental army, whom by the confederation of the United States it is provided that this Commonwealth ſhall appoint, as alſo all officers of forts and garriſons.

The diviſions of the militia into brigades, regiments and companies, made in purſuance of the militia laws now in force, ſhall be conſidered as the proper diviſions of the militia of this Commonwealth, until the ſame ſhall be altered in purſuance of ſome future law.

XI. No monies ſhall be iſſued out of the treaſury of this Commonwealth, and diſpoſed of (except ſuch ſums as may be appropriated for the redemption of bills of credit or Treaſurer's notes, or for the payment of intereſt ariſing thereon) but by warrant under the hand of the Governor for the time being, with the advice and conſent of the Council, for the neceſſary defence and ſupport of the Commonwealth; and for the protection and preſervation of the inhabitants thereof, agreeably to the acts and reſolves of the General Court.

XII. All public Boards, the Commiſſary-General, all ſuperintending officers of public magazines and ſtores, belonging to this Commonwealth, and all commanding officers of forts and garriſons within the ſame, ſhall once in every three months, officially, and without requiſition, and at other times when required by the Governor, deliver to him an account of all goods, ſtores, proviſions, ammunition, cannon with their appendages, and ſmall arms with their accoutrements, and of all other public property whatever under their care reſpectively; diſtinguiſhing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of ſuch forts and garriſons: And the ſaid commanding officer ſhall exhibit to the Governor, when required by him, true and exact plans of ſuch forts, and of the land and ſea, or harbour or harbours adjacent.

And the ſaid Boards, and all public officers, ſhall communicate to the Governor, as ſoon as may be after receiving the ſame, all letters, diſpatches, and intelligences of a public nature, which ſhall be directed to them reſpectively.

XIII. As the public good requires that the Governor ſhould not be under the undue influence of any of the members of the General Court, by a dependence on them for his ſupport—that he ſhould in all caſes act with freedom for the benefit of the public—that he ſhould not have his attention neceſſarily diverted from that object to his private concerns—and that he ſhould maintain the dignity of the Commonwealth in the character of its Chief Magiſtrate—it is neceſſary that he ſhould have an honorable ſtated ſalary, of a fixed and permanent value, amply ſufficient for thoſe purpoſes, and eſtabliſhed by ſtanding laws: And it ſhall be among the firſt acts of the General Court, after the commencement of this conſtitution, to eſtabliſh ſuch ſalary by law accordingly.

Permanent and honorable ſalaries ſhall alſo be eſtabliſhed by law for the Juſtices of the Supreme Judicial Court.

And if it ſhall be found that any of the ſalaries aforeſaid, ſo eſtabliſhed, are inſufficient, they ſhall, from time to time, be enlarged as the General Court ſhall judge proper.

CHAPTER II.

CHAPTER II.

SECTION II.

LIEUTENANT-GOVERNOR.

ART. I. THERE ſhall be annually elected a Lieutenant-Governor of the Commonwealth of *Maſſachuſetts*, whoſe title ſhall be—HIS HONOR—and who ſhall be qualified in point of religion, property, and reſidence in the Commonwealth, in the ſame manner with the Governor: And the day and manner of his election, and the qualifications of the electors, ſhall be the ſame as are required in the election of a Governor. The return of the votes for this officer, and the declaration of his election, ſhall be in the ſame manner: And if no one perſon ſhall be found to have a majority of all the votes returned, the vacancy ſhall be filled by the Senate and Houſe of Repreſentatives, in the ſame manner as the Governor is to be elected, in caſe no one perſon ſhall have a majority of the votes of the people to be Governor.

II. The Governor, and in his abſence the Lieutenant-Governor, ſhall be Preſident of the Council, but ſhall have no vote in Council: And the Lieutenant-Governor ſhall always be a member of the Council, except when the chair of the Governor ſhall be vacant.

III. Whenever the chair of the Governor ſhall be vacant, by reaſon of his death, or abſence from the Commonwealth, or otherwiſe, the Lieutenant-Governor, for the time being, ſhall, during ſuch vacancy, perform all the duties incumbent upon the Governor, and ſhall have and exerciſe all the powers and authorities which by this Conſtitution the Governor is veſted with, when perſonally preſent.

CHAPTER II.

SECTION III.

COUNCIL, and the Manner of ſettling Elections by the Legiſlature.

ART. I. THERE ſhall be a Council for adviſing the Governor in the executive part of government, to conſiſt of nine perſons beſides the Lieutenant-Governor, whom the Governor for the time being, ſhall have full power and authority from time to time, at his diſcretion, to aſſemble and call together. And the Governor, with the ſaid Counſellors, or five of them at leaſt, ſhall and may, from time to time, hold and keep a Council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

II. Nine Counſellors ſhall be annually choſen from among the perſons returned for Counſellors and Senators, on the laſt Wedneſday in *May*, by the joint ballot of the Senators and Repreſentatives aſſembled in one room: And in caſe there ſhall not be found upon the firſt choice, the whole number of nine perſons who will accept a ſeat in the Council, the deficiency ſhall be made up by the electors aforeſaid from among the people at large; and the number of Senators left ſhall conſtiute the Senate for the year. The ſeats of the perſons thus elected from the Senate, and accepting the truſt, ſhall be vacated in the Senate.

III. The Counſellors, in the civil arrangements of the Commonwealth, ſhall have rank next after the Lieutenant-Governor.

IV. Not more than two Counſellors ſhall be choſen out of any one diſtrict of this Commonwealth.

V. The reſolutions and advice of the Council ſhall be recorded in a regiſter, and ſigned by the members preſent; and this record may be called for at any time by either Houſe of the Legiſlature; and any member of the Council may inſert his opinion contrary to the reſolution of the majority.

VI. Whenever the office of the Governor and Lieutenant-Governor ſhall be vacant, by reaſon of death, abſence, or otherwiſe, then the Council, or the major part of them, ſhall, during ſuch vacancy, have full power and authority to do and execute all and every ſuch acts, matters and things, as the Governor or the Lieutenant-Governor might or could, by virtue of this Conſtitution, do or execute, if they, or either of them, were perſonally preſent.

VII. And whereas the elections appointed to be made by this Conſtitution, on the laſt Wedneſday in *May* annually, by the two Houſes of the Legiſlature, may not be compleated on that day, the ſaid elections may be adjourned from day to day until the ſame ſhall be compleated. And the order of elections ſhall be as follows: The vacancies in the Senate, if any, ſhall firſt be filled up; the Governor and Lieutenant-Governor ſhall then be elected, provided there ſhould be no choice of them by the people: And afterwards the two Houſes ſhall proceed to the election of the Council.

CHAPTER II.

SECTION IV.

SECRETARY, TREASURER, COMMISSARY, &c.

ART. I. THE Secretary, Treaſurer and Receiver-General, and the Commiſſary-General, Notaries-Public, and Naval-Officers, ſhall be choſen annually, by joint ballot of the Senators and Repreſentatives in one room. And that the citizens of this Commonwealth may be aſſured, from time to time, that the monies remaining in the public treaſury, upon the ſettlement and liquidation of the public accounts, are their property, no man ſhall be eligible as Treaſurer and Receiver-General more than five years ſucceſſively.

II. The records of the Commonwealth ſhall be kept in the office of the Secretary, who may appoint his Deputies, for whoſe conduct he ſhall be accountable, and he ſhall attend the Governor and Council, the Senate and Houſe of Repreſentatives, in perſon, or by his Deputies, as they ſhall reſpectively require.

CHAPTER III.

JUDICIARY POWER.

ART. I. THE tenure, that all commiſſion officers ſhall by law have in their offices, ſhall be expreſſed in their reſpective commiſſions. All judicial officers, duly appointed, commiſſioned and ſworn, ſhall hold their offices during good behaviour, excepting ſuch concerning whom there is different proviſion made in this Conſtitution; *Provided nevertheleſs*, The Governor, with conſent of the Council, may remove them upon the addreſs of both Houſes of the Legiſlature.

II. Each branch of the Legiſlature, as well as the Governor and Council, ſhall have authority to require the opinions of the Juſtices of the Supreme Judicial Court, upon important queſtions of law, and upon ſolemn occaſions.

III. In order that the people may not ſuffer from the long continuance in place of any Juſtice of the Peace, who ſhall fail of diſcharging the important duties of his office with ability or fidelity, all commiſſions of Juſtices of the Peace ſhall expire and become void, in the term of ſeven years from their reſpective dates; and upon the expiration of any commiſſion, the ſame may if neceſſary, be renewed, or another perſon appointed, as ſhall moſt conduce to the well-being of the Commonwealth.

IV.

IV. The Judges of Probate of Wills, and for granting letters of adminiſtration, ſhall hold their Courts at ſuch place or places, on fixed days, as the convenience of the people ſhall require. And the Legiſlature ſhall, from time to time, hereafter appoint ſuch times and places; until which appointments, the ſaid Courts ſhall be holden at the times and places which the reſpective Judges ſhall direct.

V. All cauſes of marriage, divorce and alimony, and all appeals from the Judges of Probate, ſhall be heard and determined by the Governor and Council until the Legiſlature ſhall, by law, make other proviſion.

CHAPTER IV.

DELEGATES TO CONGRESS.

THE Delegates of the Commonwealth to the Congreſs of the United States, ſhall, ſometime in the month of *June*, annually, be elected by the joint ballot of the Senate and Houſe of Repreſentatives, aſſembled together in one room; to ſerve in Congreſs for one year, to commence on the firſt Monday in *November* then next enſuing. They ſhall have commiſſions under the hand of the Governor, and the great ſeal of the Commonwealth; but may be recalled at any time within the year, and others choſen and commiſſioned, in the ſame manner, in their ſtead.

CHAPTER V.

The Univerſity at *Cambridge*, and Encouragement of Literature, &c.

SECTION I.

THE UNIVERSITY.

ART. I. WHEREAS our wiſe and pious anceſtors, ſo early as the year one thouſand ſix hundred and thirty-ſix, laid the foundation of *Harvard-College*, in which univerſity many perſons of great eminence have, by the bleſſing of GOD, been initiated in thoſe arts and ſciences, which qualified them for public employments both in Church and State: And whereas the encouragement of arts and ſciences, and all good literature, tends to the honor of GOD, the advantage of the Chriſtian religion, and the great benefit of this and the other United States of *America*—It is declared, That the PRESIDENT AND FELLOWS OF HARVARD-COLLEGE, in their corporate capacity, and their ſucceſſors in that capacity, their officers and ſervants, ſhall have, hold, uſe, exerciſe and enjoy all the powers, authorities, rights, liberties, privileges, immunities and franchiſes, which they now have, or are entitled to have, hold, uſe, exerciſe and enjoy: And the ſame are hereby ratified and confirmed unto them, the ſaid Preſident and Fellows of Harvard-College, and to their ſucceſſors, and to their officers and ſervants, reſpectively, forever.

II. And whereas there have been at ſundry times by divers perſons, gifts, grants, deviſes of houſes, lands, tenements, goods, chattles, legacies and conveyances, heretofore made, either to Harvard-College in *Cambridge*, in *New-England*, or to the Preſident and Fellows of Harvard-College, or to the ſaid College, by ſome other deſcription, under ſeveral charters ſucceſſively: IT IS DECLARED, That all the ſaid gifts, grants, deviſes, legacies and conveyances, are hereby forever confirmed unto the Preſident and Fellows of Harvard-College, and to their ſucceſſors, in the capacity aforeſaid, according to the true intent and meaning of the donor or donors, grantor or grantors, deviſor or deviſors.

III.

III. And whereas by an act of the General Court of the Colony of *Maſſachuſetts-Bay*, paſſed in the year one thouſand ſix hundred and forty-two, the Governor and Deputy-Governor, for the time being, and all the Magiſtrates of that juriſdiction, were, with the Preſident, and a number of the clergy in the ſaid act deſcribed, conſtituted the overſeers of Harvard-College: And it being neceſſary, in this new Conſtitution of Government, to aſcertain who ſhall be deemed ſucceſſors to the ſaid Governor, Deputy-Governor and Magiſtrates: IT IS DECLARED, That the Governor, Lieutenant-Governor, Council and Senate of this Commonwealth, are, and ſhall be deemed, their ſucceſſors; who, with the Preſident of Harvard-College, for the time being, together with the Miniſters of the congregational churches in the towns of *Cambridge*, *Watertown*, *Charleſtown*, *Boſton*, *Roxbury*, and *Dorcheſter*, mentioned in the ſaid act, ſhall be, and hereby are, veſted with all the powers and authority belonging, or in any way appertaining to the overſeers of Harvard-College; *Provided*, that nothing herein ſhall be conſtrued to prevent the Legiſlature of this Commonwealth from making ſuch alterations in the government of the ſaid Univerſity, as ſhall be conducive to its advantage, and the intereſt of the republic of letters, in as full a manner as might have been done by the Legiſlature of the late Province of the *Maſſachuſetts-Bay*.

CHAPTER V.

SECTION II.

THE ENCOURAGEMENT OF LITERATURE, &c.

WISDOM and knowledge, as well as virtue, diffuſed generally among the body of the people, being neceſſary for the preſervation of their rights and liberties; and as theſe depend on ſpreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it ſhall be the duty of Legiſlatures and Magiſtrates, in all future periods of this Commonwealth, to cheriſh the intereſts of literature and the ſciences, and all ſeminaries of them; eſpecially the Univerſity at *Cambridge*, public ſchools, and grammar ſchools in the towns; to encourage private ſocieties and public inſtitutions, rewards and immunities, for the promotion of agriculture, arts, ſciences, commerce, trades, manufactures, and a natural hiſtory of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, induſtry and frugality, honeſty and punctuality in their dealings; ſincerity, good humour, and all ſocial affections, and generous ſentiments among the people.

CHAPTER VI.

Oaths and Subſcriptions; Incompatibility of and Excluſion from Offices; Pecuniary Qualifications; Commiſſions; Writs; Confirmation of Laws; Habeas Corpus; The Enacting Stile; Continuance of Officers; Proviſion for a future Reviſal of the Conſtitution, &c.

ART. I. ANY perſon choſen Governor, Lieutenant-Governor, Counſellor, Senator, or Repreſentative, and accepting the truſt, ſhall, before he proceed to execute the duties of his place or office, make and ſubſcribe the following declaration, viz.—

I,

I, A. B. do declare, that I believe the Chriſtian religion, and have a firm perſuaſion of its truth; and that I am ſeized and poſſeſſed, in my own right, of the property required by the Conſtitution as one qualification for the office or place to which I am elected.

And the Governor, Lieutenant-Governor and Counſellors, ſhall make and ſubſcribe the ſaid declaration, in the preſence of the two Houſes of Aſſembly; and the Senators and Repreſentatives firſt elected under this Conſtitution, before the Preſident and five of the Council of the former Conſtitution, and forever afterwards before the Governor and Council for the time being.

And every perſon choſen to either of the places or offices aforeſaid, as alſo any perſon appointed or commiſſioned to any judicial, executive, military, or other office under the government, ſhall, before he enters on the diſcharge of the buſineſs of his place or office, take and ſubſcribe the following declaration, and oaths or affirmations, viz.

"I, A. B. do truly and ſincerely acknowledge, profeſs, teſtify and declare, that the Commonwealth of *Maſſachuſetts* is, and of right ought to be, a free, ſovereign and independent State; and I do ſwear, that I will bear true faith and allegiance to the ſaid Commonwealth, and that I will defend the ſame againſt traiterous conſpiracies and all hoſtile attempts whatſoever: And that I do renounce and abjure all allegiance, ſubjection and obedience to the King, Queen, or Government of *Great-Britain*, (as the caſe may be) and every other foreign power whatſoever: And that no foreign Prince, Perſon, Prelate, State or Potentate, hath, or ought to have, any juriſdiction, ſuperiority, pre-eminence, authority, diſpenſing or other power, in any matter, civil, eccleſiaſtical or ſpiritual, within this Commonwealth; except the authority and power which is or may be veſted by their conſtituents in the Congreſs of the United States: And I do further teſtify and declare, that no man or body of men, hath or can have any right to abſolve or diſcharge me from the obligation of this oath, declaration or affirmation; and that I do make this acknowledgment, profeſſion, teſtimony, declaration, denial, renunciation and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evaſion, or ſecret reſervation whatſoever. *So help me GOD.*"

"I, A. B. do ſolemnly ſwear and affirm, that I will faithfully and impartially diſcharge and perform all the duties incumbent on me as according to the beſt of my abilities and underſtanding, agreeably to the rules and regulations of the Conſtitution, and the laws of this Commonwealth. *So help me GOD.*"

Provided always, That when any perſon choſen or appointed as aforeſaid, ſhall be of the denomination of the people called Quakers, and ſhall decline taking the ſaid oaths, he ſhall make his affirmation in the foregoing form, and ſubſcribe the ſame, omitting the words "*I do ſwear*," "*and abjure*," "*oath or*," "*and abjuration*," in the firſt oath; and in the ſecond oath, the words "*ſwear and*;" and in each of them the words "*So help me GOD*;" ſubjoining inſtead thereof, "*This I do under the pains and penalties of perjury.*"

And the ſaid oaths or affirmations ſhall be taken and ſubſcribed by the Governor, Lieutenant-Governor, and Counſellors, before the Preſident of the Senate, in the preſence of the two Houſes of Aſſembly; and by the Senators and Repreſentatives firſt elected under this Conſtitution, before the Preſident and five of the Council of the former Conſtitution; and forever afterwards before the Governor and Council for the time being: And by the reſidue of the officers aforeſaid, before ſuch perſons and in ſuch manner as from time to time ſhall be preſcribed by the Legiſlature.

II. No Governor, Lieutenant-Governor, or Judge of the Supreme Judicial Court, ſhall hold any other office or place, under the authority of this Commonwealth, except ſuch as by this Conſtitution they are admitted to hold, ſaving that the Judges of the ſaid Court may hold the offices of Juſtices of the Peace through the State; nor ſhall they hold any other place or office, or receive any penſion or ſalary from any other State or Government or power whatever.

No perſon ſhall be capable of holding or exerciſing at the ſame time, more than one of the following offices within this State, viz.—Judge of Probate—Sheriff—Regiſter of Probate—or Regiſter of Deeds—and never more than any two offices which are to be held by appointment of the Governor, or the Governor and Council, or the Senate, or the Houſe of Repreſentatives, or by the election of the people of the State at large, or of the people of any county (military offices and the offices of Juſtices of the Peace excepted) ſhall be held by one perſon.

No perſon holding the office of Judge of the Supreme Judicial Court—Secretary—Attorney-General—Sollicitor-General—Treaſurer or Receiver-General—Judge of Probate—Commiſſary-General—Preſident, Profeſſor, or Inſtructor of Harvard-College—Sheriff—Clerk of the Houſe of Repreſentatives—Regiſter of Probate—Regiſter of Deeds—Clerk of the Supreme Judicial Court—Clerk of the Inferior Court of Common Pleas—or Officer of the Cuſtoms, including in this deſcription Naval-Officers—ſhall at the ſame time have a ſeat in the Senate or Houſe of Repreſentatives; but their being choſen or appointed to, and accepting the ſame, ſhall operate as a reſignation of their ſeat in the Senate or Houſe of Repreſentatives; and the place ſo vacated ſhall be filled up.

And the ſame rule ſhall take place in caſe any Judge of the ſaid Supreme Judicial Court, or Judge of Probate, ſhall accept a ſeat in Council; or any Counſellor ſhall accept of either of thoſe offices or places.

And no perſon ſhall ever be admitted to hold a ſeat in the Legiſlature, or any office of truſt or importance under the government of this Commonwealth, who ſhall, in the due courſe of law, have been convicted of bribery or corruption in obtaining an election or appointment.

III. In all caſes where ſums of money are mentioned in this Conſtitution, the value thereof ſhall be computed in ſilver at *ſix ſhillings and eight pence* per ounce: And it ſhall be in the power of the Legiſlature from time to time to increaſe ſuch qualifications, as to property, of the perſons to be elected to offices, as the circumſtances of the Commonwealth ſhall require.

IV. All commiſſions ſhall be in the name of the Commonwealth of *Maſſachuſetts*, ſigned by the Governor, and atteſted by the Secretary or his Deputy, and have the great ſeal of the Commonwealth affixed thereto.

V. All writs iſſuing out of the Clerk's office in any of the Courts of law, ſhall be in the name of the Commonwealth of *Maſſachuſetts*: They ſhall be under the ſeal of the Court from whence they iſſue: They ſhall bear teſt of the firſt Juſtice of the Court to which they ſhall be returnable, who is not a party, and be ſigned by the Clerk of ſuch Court.

VI. All the laws which have heretofore been adopted, uſed and approved, in the Province, Colony or State of *Maſſachuſetts-Bay*, and uſually practiced on in the Courts of law, ſhall ſtill remain and be in full force, until altered or repealed by the Legiſlature; ſuch parts only excepted as are repugnant to the rights and liberties contained in this Conſtitution.

VII. The privilege and benefit of the writ of habeas-corpus ſhall be enjoyed in this Commonwealth in the moſt free, eaſy, cheap, expeditious and ample manner; and ſhall not be ſuſpended by the Legiſlature, except upon the moſt urgent and preſſing occaſions, and for a limited time, not exceeding twelve months.

VIII. The enacting ſtile, in making and paſſing all acts, ſtatutes and laws, ſhall be—"Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame."

IX. To the end there may be no failure of juſtice or danger ariſe to the Commonwealth from a change of the Form of Government—all officers, civil and military, holding commiſſions under the government and people of *Maſſachuſetts-Bay*, in *New-England*, and all other officers of the ſaid government and people, at the time this Conſtitution ſhall take effect, ſhall have, hold, uſe, exerciſe and enjoy, all the powers and authority to them granted or committed, until other perſons ſhall be appointed in their ſtead: And all Courts of law ſhall proceed in the execution of the buſineſs of their reſpective departments; and all the executive and legiſlative officers, bodies and powers ſhall continue in full force, in the enjoyment and exerciſe of all their truſts, employments and authority; until

the

the General Court and the Supreme and executive officers under this Conſtitution, are deſignated and inveſted with their reſpective truſts, powers and authority.

X. In order the more effectually to adhere to the principles of the Conſtitution, and to correct thoſe violations which by any means may be made therein, as well as to form ſuch alterations as from experience ſhall be found neceſſary—the General Court which ſhall be in the year of our LORD, one thouſand ſeven hundred and ninety-five, ſhall iſſue precepts to the Selectmen of the ſeveral towns, and to the Aſſeſſors of the unincorporated plantations, directing them to convene the qualified voters of their reſpective towns and plantations for the purpoſe of collecting their ſentiments on the neceſſity or expediency of reviſing the Conſtitution, in order to amendments.

And if it ſhall appear by the returns made, that two-thirds of the qualified voters throughout the State, who ſhall aſſemble and vote in conſequence of the ſaid precepts, are in favour of ſuch reviſion or amendment, the General Court ſhall iſſue precepts, or direct them to be iſſued from the Secretary's office, to the ſeveral towns, to elect delegates to meet in Convention for the purpoſe aforeſaid.

The ſaid delegates to be choſen in the ſame manner and proportion as their Repreſentatives in the ſecond branch of the Legiſlature are by this Conſtitution to be choſen.

XI. This Form of Government ſhall be enrolled on parchment and depoſited in the Secretary's office, and be a part of the laws of the land—and printed copies thereof ſhall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the ſaid laws.

The foregoing is the Conſtitution or Form of Government for the Commonwealth of Maſſachuſetts, *as agreed upon by the Delegates of the People in Convention, after it had been approved by the People: Whoſe Approbation appeared by the Returns from the ſeveral Towns and Plantations, received and examined in the Convention, previouſly to its Diſſolution, on the ſixteenth Day of* June, *in the Year of our* LORD, *one Thouſand ſeven Hundred and Eighty.*

JAMES BOWDOIN,

(Preſident of the Convention.

Atteſt.

SAMUEL BARRETT, Secretary.

N. B. By Virtue of a Reſolve of the Convention, *June* 15, 1780, the Adminiſtration of Government, agreeably to this Conſtitution, commenced the twenty-fifth Day of *October*, 1780; the neceſſary Elections being previouſly made by the People of the Commonwealth, purſuant to the ſaid Reſolve.

THE DEFINITIVE TREATY

BETWEEN

GREAT-BRITAIN

AND THE

UNITED STATES *of* AMERICA,

Signed at PARIS, *the* 3*d Day of* SEPTEMBER, 1783.

By the UNITED STATES in Congreſs Aſſembled.

A PROCLAMATION.

Preamble.

WHEREAS Definitive Articles of Peace and Friendſhip, between the United States of America, *and his Britannic Majeſty, were concluded and ſigned at* Paris, *on the* 3*d day of* September, 1783, *by the Plenipotentiaries of the ſaid United States, and of his ſaid Britannic Majeſty, duly and reſpectively authorized for that purpoſe; which definitive articles are in the words following.*

IN THE NAME OF THE MOST HOLY AND UNDIVIDED TRINITY.

IT having pleaſed the Divine Providence to diſpoſe the hearts of the Moſt Serene and Moſt Potent Prince GEORGE the third, by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, Defender of the Faith, Duke of *Brunſwick*, and *Lunenbourg*, Arch-Treaſurer, and Prince Elector of the Holy *Roman* Empire, &c. and of the United States of *America*, to forget all paſt miſunderſtandings and differences that have unhappily interrupted the good correſpondence and friendſhip which they mutually wiſh to reſtore, and to eſtabliſh ſuch a beneficial and ſatisfactory intercourſe between the two countries upon the ground of reciprocal advantages and mutual convenience, as may promote and ſecure to both, perpetual peace and harmony; and having, for this deſirable end, already laid the foundation of peace and reconciliation, by the proviſional Articles ſigned at *Paris*, on the 30th of *November*, 1782, by the Commiſſioners empowered on each part, which Articles were agreed to be inſerted in and to conſtitute the Treaty of Peace, propoſed to be concluded between the Crown of *Great-Britain*, and the ſaid United States, but which Treaty was not to be concluded until terms of peace ſhould be agreed upon between *Great-Britain* and *France*, and his Britannic Majeſty ſhould be ready to con-

clude ſuch Treaty accordingly, and the Treaty between *Great-Britain* and *France*, having ſince been concluded, his Britannic Majeſty and the United States of *America*, in order to carry into full effect, the Proviſional Articles abovementioned, according to the tenor thereof, have conſtituted and appointed, *that is to ſay*, his Britannic Majeſty on his part, *David Hartly*, Eſq. Member of the Parliament of *Great-Britain*, and the ſaid United States on their part, *John Adams*, Eſq. late a Commiſſioner of the United States of *America*, at the Court of *Verſailles*, late Delegate in Congreſs from the State of *Maſſachuſetts*, and Chief Juſtice of the ſaid State, and Miniſter Plenipotentiary of the ſaid United States, to their High Mightineſſes the States-General of the United Netherlands; *Benjamin Franklin*, Eſq. late Delegate in Congreſs from the State of *Pennſylvania*, Preſident of the Convention of the ſaid State, and Miniſter Plenipotentiary from the United States of *America*, at the Court of *Verſailles*; and *John Jay*, Eſq. late Preſident of Congreſs, and Chief Juſtice of the State of *New-York*, and Miniſter Plenipotentiary from the ſaid United States at the Court of *Madrid*; to be the Plenipotentiaries for the concluding and ſigning the preſent Definitive Treaty; who after having reciprocally communicated their reſpective full powers, have agreed upon and confirmed the following articles.

United States acknowledged to be free, ſovereign and independent.

ART. I. His Britannic Majeſty acknowledges the ſaid United States, viz. *New-Hampſhire*, *Maſſachuſetts-Bay*, *Rhode-Iſland* and *Providence Plantations*, *Connecticut*, *New-York*, *New-Jerſey*, *Pennſylvania*, *Delaware*, *Maryland*, *Virginia*, *North-Carolina*, *South-Carolina*, and *Georgia*, to be Free, Sovereign, and Independent States; that he treats with them as ſuch, and for himſelf, his heirs and ſucceſſors, relinquiſhes all claims to the government, propriety and territorial rights of the ſame, and every part thereof.

Boundaries of the United States

ART. II. And that all diſputes which might ariſe in future on the ſubject of the boundaries of the ſaid United States, may be prevented, it is hereby agreed and declared, that the following are, and ſhall be their boundaries, viz.—From the North-weſt angle of *Nova-Scotia*, viz. that angle which is formed by a line drawn due north from the ſource of *St. Croix-River*, to the Highlands, along the ſaid Highlands which divide thoſe Rivers that empty themſelves into the River *St. Lawrence*, from thoſe which fall into the Atlantic Ocean, to the northweſternmoſt-head of *Connecticut-River*; thence down along the middle of that River, to the 45th degree of north latitude; from thence by a line due weſt on ſaid latitude, until it ſtrikes the River *Iroquois* or *Cataraquy*; thence along the middle of ſaid River into *Lake Ontario*; through the middle of ſaid Lake, until it ſtrikes the communication by water between that Lake and *Lake Erie*; thence along the middle of ſaid communication into *Lake Erie*, through the middle of ſaid Lake, until it arrives at the water communication between that Lake and *Lake Huron*; thence along the middle of ſaid water communication, into *Lake Huron*; thence through the middle of ſaid Lake, to the water communication between that Lake and *Lake Superior*; thence through *Lake Superior*

rior northward of the *Iſles Royal* and *Phelipeaux*, to the *Long Lake*; thence through the middle of the ſaid *Long Lake*, and the water communication between it and the Lake of the Woods, to the ſaid Lake of the Woods; thence through the ſaid Lake, to the moſt north weſtern point thereof, and from thence on a due weſt courſe to the River *Miſſiſippi*; thence by a line to be drawn along the middle of the ſaid River *Miſſiſippi*, until it ſhall interſect the northermoſt part of the 31ſt degree of north latitude: South, by a line to be drawn due eaſt from the determination of the line laſt mentioned, in the latitude of 31 degrees north of the *Equator*, to the middle of *River Apalachicola*, or *Catahouche*; thence along the middle thereof to its junction with the *Flint-River*; thence ſtrait to the head of *St. Mary's-River*; and thence down along the middle of *St. Mary's-River*, to the Atlantic Ocean; eaſt, by a line to be drawn along the middle of the *River St. Croix*, from its mouth in the bay of *Funday* to its ſource, and from its ſource directly north to the aforeſaid Highlands which divide the Rivers that fall into the Atlantic Ocean, from thoſe which fall into the River *St. Lawrence*, comprehending all the Iſlands within twenty leagues of any part of the ſhores of the United States, and lying between lines to be drawn due eaſt from the points where the aforeſaid boundaries between *Nova-Scotia* on the one part, and *Eaſt-Florida* on the other, ſhall reſpectively touch the bay of *Funday*, and the Atlantic Ocean, excepting ſuch Iſlands as now are, or heretofore have been within the limits of the ſaid province of *Nova-Scotia*.

People of the United States to enjoy the right to take fiſh of every kind on the Grand Bank, &c.

ART. III. It is agreed that the people of the United States ſhall continue to enjoy unmoleſted, the right to take fiſh of every kind on the *Grand-Bank*, and on all the other Banks of *Newfoundland*; alſo in the Gulph of *St. Lawrence*, and at all other places in the ſea, where the inhabitants of both countries uſed at any time heretofore to fiſh. And alſo, that the inhabitants of the United States ſhall have liberty to take fiſh of every kind on ſuch part of the coaſt of *Newfoundland*, as *Britiſh* fiſhermen ſhall uſe, (but not to dry or cure the ſame on that Iſland) and alſo on the coaſts, bays and creeks of all other of his Britannic Majeſty's dominions in *America*; and that the *American* fiſhermen ſhall have liberty to dry and cure fiſh in any of the unſettled bays, harbours and creeks of *Nova-Scotia*, *Magdalen-Iſlands* and *Labrador*, ſo long as the ſame ſhall remain unſettled; but ſo ſoon as the ſame, or either of them ſhall be ſettled, it ſhall not be lawful for the ſaid fiſhermen to dry or cure fiſh at ſuch ſettlement without a previous agreement for that purpoſe with the inhabitants, proprietors, or poſſeſſors of the ground.

Creditors on either ſide ſhall meet with no lawful impediments to the recovery of debts.

ART. IV. It is agreed that creditors on either ſide ſhall meet with no lawful impediments to the recovery of the full value in ſterling money of all *bona fide* debts heretofore contracted.

Congreſs ſhall recommend to the reſpective Legiſlatures, to provide for the reſtitution of all eſtates, &c.

ART. V. It is agreed that the Congreſs ſhall earneſtly recommend it to the Legiſlatures of the reſpective States, to provide for the reſtitution of all eſtates, rights and properties, which have been confiſcated, belonging to real *Britiſh* ſubjects, and alſo of the eſtates, rights and properties, of perſons reſident in diſtricts in the poſſeſſion of his Majeſty's arms, and who have not borne arms againſt the

the ſaid United States; and that perſons of any other deſcription ſhall all have free liberty to go to any part or parts of any of the Thirteen United States, and therein to remain twelve months unmoleſted in their endeavours to obtain the reſtitution of ſuch of their eſtates, rights, and properties, as may have been confiſcated; and that Congreſs ſhall alſo earneſtly recommend to the ſeveral States a reconſideration and reviſion of all acts or laws regarding the premiſes, ſo as to render the ſaid laws or acts perfectly conſiſtent not only with juſtice and equity, but with that ſpirit of conciliation which on the return of the bleſſings of peace ſhould univerſally prevail; and that Congreſs ſhall earneſtly recommend to the ſeveral States, that the eſtates, rights, and properties of ſuch laſt mentioned perſons ſhall be reſtored to them, they refunding to any perſons who may be now in poſſeſſion the *bona fide* price (where any has been given) which ſuch perſons may have paid on purchaſing any of the ſaid lands, rights or properties ſince the confiſcation.

And it is agreed that all perſons who have any intereſt in confiſcated lands, either by debts, marriage ſettlements, or otherwiſe, ſhall meet with no lawful impediment in the proſecution of their juſt rights.

No future confiſcations ſhall be made, &c.

ART. VI. That there ſhall be no future confiſcations made, nor any proſecution commenced againſt any perſon or perſons for, or by reaſon of the part which he or they may have taken in the preſent war, and that no perſon ſhall on that account, ſuffer any future loſs or damage, either in his perſon, liberty or property, and that thoſe who may be in confinement on ſuch charges at the time of the ratification of the Treaty in *America*, ſhall be immediately ſet at liberty, and the proſecutions ſo commenced, be diſcontinued.

Hoſtilities ſhall from henceforth ceaſe, & priſoners on both ſides ſhall be ſet at liberty, &c.

ART. VII. There ſhall be a firm and perpetual peace between his Britannic Majeſty and the ſaid States, and between the ſubjects of the one, and the citizens of the other; wherefore all hoſtilities both by ſea and land, ſhall from henceforth ceaſe; all priſoners on both ſides ſhall be ſet at liberty, and his Britannic Majeſty ſhall, with all convenient ſpeed, and without cauſing any deſtruction, or carrying away any negroes, or other property of the *American* inhabitants, withdraw all his armies, garriſons and fleets from the ſaid United States, and from every poſt, place and harbour within the ſame; leaving in all fortifications the *American* Artillery that may be therein; and ſhall alſo order and cauſe all Archives, Records, Deeds, and Papers belonging to any of the ſaid States, or their citizens, which in the courſe of the war may have fallen into the hands of his officers, to be forthwith reſtored and delivered to the proper States and perſons to whom they belong.

Navigation of the River *Miſſiſippi* ſhall forever remain free.

ART. VIII. The navigation of the River *Miſſiſippi*, from its ſource to the ocean, ſhall forever remain free and open to the ſubjects of *Great-Britain*, and the citizens of the United States.

Places conquered by the arms of either, before the arrival of the proviſional articles, ſhall be reſtored.

ART. IX. In caſe it ſhall ſo happen, that any place or territory belonging to *Great-Britain*, or to the United States, ſhould have been conquered by the arms of either from the other, before the arrival of the ſaid Proviſional Articles in *America*, it is agreed that the ſame ſhall be reſtored without difficulty, and without requiring any compenſation.

ART.

ART. X. The ſolemn ratifications of the preſent Treaty, expedited in good and due form, ſhall be exchanged between the contracting parties in the ſpace of ſix months, or ſooner, if poſſible, to be computed from the day of the ſignature of the preſent Treaty. In witneſs whereof we the under-ſigned, their Miniſters Plenipotentiary, have in their name, and in virtue of our full powers, ſigned with our hands the preſent Definitive Treaty, and cauſed the ſeals of our arms to be affixed thereto.

Ratifications of this Treaty, ſhall be exchanged between the contracting parties.

DONE at *Paris*, this third day of *September*, in the year of our LORD, one thouſand ſeven hundred and eighty-three.

(L.S.) DAVID HARTLEY. (L.S.) JOHN ADAMS.
(L.S.) B. FRANKLIN.
(L.S.) JOHN JAY.

AND WE the United States in Congreſs Aſſembled, having ſeen and duly conſidered the Definitive Articles aforeſaid, did by a certain act under the ſeal of the United States, bearing date this 14th day of *January* 1784, approve, ratify and confirm the ſame and every part and clauſe thereof, engaging and promiſing, that we would ſincerely and faithfully perform and obſerve the ſame, and never ſuffer them to be violated by any one, or tranſgreſſed in any manner as far as ſhould be in our power: And being ſincerely diſpoſed to carry the ſaid articles into execution truly, honeſtly and with good faith, according to the intent and meaning thereof, We have thought proper by theſe preſents, to notify the premiſes to all the good citizens of theſe United States, hereby requiring and enjoining all bodies of Magiſtracy, Legiſlative, Executive and Judiciary, all perſons bearing office, civil or military, of whatever rank, degree or powers, and all others, the good citizens of theſe States of every vocation and condition, that reverencing thoſe ſtipulations entered into on their behalf, under the authority of that federal bond by which their exiſtence as an independent people is bound up together, and is known and acknowledged by the nations of the world, and with that good faith which is every man's ſureſt guide, within their ſeveral offices, juriſdictions and vocations, they carry into effect the ſaid Definitive Articles, and every clauſe and ſentence thereof, ſincerely, ſtrictly and compleatly.

Ratification.

Citizens of the United States required to carry into effect the ſaid Definitive Articles.

GIVEN under the Seal of the UNITED STATES. Witneſs His Excellency THOMAS MIFFLIN, our Preſident, at *Annapolis*, this fourteenth day of *January*, in the year of our LORD, one thouſand ſeven hundred and eighty-four, and of the ſovereignty and independence of the UNITED STATES of AMERICA the eighth.

THOMAS MIFFLIN, Preſident.

By the UNITED STATES, in CONGRESS Assembled,
JANUARY 14, 1784.

Recommendation of Congress, to provide for the restitution of estates.

RESOLVED, *unanimously*, nine States being present, That it be, and it is hereby earnestly recommended to the Legislatures of the respective States, to provide for the restitution of all estates, rights, and properties, which have been confiscated, belonging to real *British* subjects, and also of the estates, rights and properties of persons resident in districts which were in the possession of his Britannic Majesty's arms, at any time between the thirtieth day of *November*, 1782, and the fourteenth day of *January*, 1784, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated. And it is also hereby earnestly recommended to the several States, to re-consider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation which on the return of the blessings of peace should universally prevail.

And it is hereby also earnestly recommended to the several States, that the estates, rights and properties of such last mentioned persons should be restored to them, they refunding to any persons who may be now in possession, the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the confiscation.

CHARLES THOMSON, Secretary.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA,

As agreed upon by the Convention of Delegates of the UNITED STATES, held at PHILADELPHIA.

PREAMBLE.

WE, the People of the UNITED STATES, in order to form a more perfect union, eſtabliſh juſtice, inſure domeſtick tranquility, provide for the common defence, promote the general welfare, and ſecure the bleſſings of liberty to ourſelves and our poſterity, do ordain and eſtabliſh this Conſtitution for the UNITED STATES OF AMERICA.

LEGISLATIVE POWER.

ARTICLE I.

THE HOUSE OF REPRESENTATIVES.

SECTION I.

ALL Legiſlative powers herein granted, ſhall be veſted in a Congreſs of the United States, which ſhall conſiſt of a Senate and Houſe of Repreſentatives.

SECTION II.

THE Houſe of Repreſentatives ſhall be compoſed of Members choſen every ſecond year by the people of the ſeveral States, and the Electors in each State, ſhall have the qualifications requiſite for Electors of the moſt numerous branch of the State Legiſlature.

No perſon ſhall be a Repreſentative who ſhall not have attained to the age of twenty-five years, and been ſeven years a citizen of the United States, and who ſhall not, when elected, be an inhabitant of that State in which he ſhall be choſen.

Repreſentatives and direct taxes ſhall be apportioned among the ſeveral States which may be included within this Union, according to their reſpective numbers, which ſhall be determined by adding to the whole number of free perſons, including thoſe bound to ſervice for a term of years, and excluding Indians not taxed, three-fifths of all other perſons. The actual enumeration ſhall be made within three years after the firſt meeting of the Congreſs of the United States, and within every ſubſequent term of ten years, in

ſuch

ſuch manner as they ſhall by law direct. The number of Repreſentatives ſhall not exceed one for every thirty thouſand, but each State ſhall have at leaſt one Repreſentative; and until ſuch enumeration ſhall be made, the State of *New-Hampſhire* ſhall be entitled to chuſe three, *Maſſachuſetts* eight, *Rhode-Iſland* and *Providence* Plantations one, *Connecticut* five, *New-York* ſix, *New-Jerſey* four, *Pennſylvania* eight, *Delaware* one, *Maryland* ſix, *Virginia* ten, *North-Carolina* five, *South-Carolina* five, and *Georgia* three.

When vacancies happen in the repreſentation from any State, the Executive authority thereof, ſhall iſſue writs of election to fill ſuch vacancies.

The Houſe of Repreſentatives ſhall chuſe their Speaker and other officers; and ſhall have the ſole power of impeachment.

SENATE.

SECTION III.

THE Senate of the United States, ſhall be compoſed of two Senators from each State, choſen by the Legiſlature thereof, for ſix years; and each Senator ſhall have one vote.

Immediately after they ſhall be aſſembled in conſequence of the firſt election, they ſhall be divided as equally as may be into three claſſes. The ſeats of the Senators of the firſt claſs ſhall be vacated at the expiration of the ſecond year, of the ſecond claſs at the expiration of the fourth year, and of the third claſs at the expiration of the ſixth year, ſo that one third may be choſen every ſecond year; and if vacancies happen by reſignation, or otherwiſe, during the receſs of the Legiſlature of any State, the Executive thereof, may make temporary appointments until the next meeting of the Legiſlature, which ſhall then fill ſuch vacancies.

No perſon ſhall be a Senator who ſhall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who ſhall not, when elected, be an inhabitant of that State, for which he ſhall be choſen.

The Vice-Preſident of the United States, ſhall be Preſident of the Senate, but ſhall have no vote, unleſs they be equally divided.

The Senate ſhall chuſe their other officers, and alſo a Preſident pro-tempore, in the abſence of the Vice-Preſident, or when he ſhall exerciſe the office of Preſident of the United States.

The Senate ſhall have the ſole power to try all impeachments. When ſitting for that purpoſe, they ſhall be on oath or affirmation. When the Preſident of the United States is tried, the Chief Juſtice ſhall preſide: And no perſon ſhall be convicted without the concurrence of two-thirds of the Members preſent.

Judgment in caſes of impeachment ſhall not extend further than to removal from office, and diſqualification to hold and enjoy any office of honour, truſt, or profit under the United States; but the party convicted ſhall nevertheleſs be liable and ſubject to indictment, trial, judgment and puniſhment, according to law. IV.

SECTION IV.

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators.

THE GENERAL CONGRESS.

THE Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in *December*, unless they shall by law appoint a different day.

SECTION V.

Each House shall be the judge of the elections, returns and qualifications of its own Members, and a majority of each, shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its Members for disorderly behaviour, and, with the concurrence of two-thirds, expel a Member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been encreased during such time; and no person holding any office under the United States, shall be a Member of either House, during his continuance in office.

THE POWERS OF CONGRESS.

SECTION VII.

ALL bills for raiſing revenue, ſhall originate in the Houſe of Repreſentatives; but the Senate may propoſe or concur with amendments as on other bills.

Every bill which ſhall have paſſed the Houſe of Repreſentatives and the Senate, ſhall, before it become a law, be preſented to the Preſident of the United States; if he approve he ſhall ſign it, but if not he ſhall return it, with his objections, to that Houſe in which it ſhall have originated, who ſhall enter the objections at large on their journal, and proceed to reconſider it. If after ſuch reconſideration, two-thirds of that Houſe ſhall agree to paſs the bill, it ſhall be ſent, together with the objections, to the other Houſe, by which it ſhall likewiſe be reconſidered, and if approved by two-thirds of that Houſe, it ſhall become a law. But in all ſuch caſes the votes of both Houſes ſhall be determined by yeas and nays, and the names of the perſons voting for and againſt the bill, ſhall be entered on the journal of each Houſe reſpectively. If any bill ſhall not be returned by the Preſident within ten days (Sundays excepted) after it ſhall have been preſented to him, the ſame ſhall be a law, in like manner as if he had ſigned it, unleſs the Congreſs by their adjournment, prevent its return, in which caſe it ſhall not be a law.

Every order, reſolution, or vote, to which the concurrence of the Senate and Houſe of Repreſentatives may be neceſſary, (except on a queſtion of adjournment) ſhall be preſented to the Preſident of the United States; and before the ſame ſhall take effect, ſhall be approved by him, or being diſapproved by him, ſhall be repaſſed by two-thirds of the Senate and Houſe of Repreſentatives, according to the rules and limitations preſcribed in the caſe of a bill.

SECTION VIII.

The Congreſs ſhall have power—To lay and collect taxes, duties, impoſts and exciſes, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, impoſts and exciſes ſhall be uniform throughout the United States:—To borrow money on the credit of the United States:—To regulate commerce with foreign nations, and among the ſeveral States, and with the Indian tribes:—To eſtabliſh an uniform rule of naturalization, and uniform laws on the ſubject of bankruptcies throughout the United States:—To coin money, regulate the value thereof, and of foreign coin, and fix the ſtandard of weights and meaſures:—To provide for the puniſhment of counterfeiting the ſecurities and current coin of the United States:—To eſtabliſh poſt-offices and poſt-roads:—To promote the progreſs of ſcience, and uſeful arts, by ſecuring for limited times to authors and inventors the excluſive right to their reſpective writings and diſcoveries:—To conſtitute tribunals inferiour to the Supreme Court:—To define and puniſh piracies and felonies committed on the high ſeas, and offences againſt the law of nations:—To declare war,

grant

grant letters of marque and repriſal, and make rules concerning captures on land and water :—To raiſe and ſupport armies, but no appropriation of money to that uſe ſhall be for a longer term than two years :—To provide and maintain a navy :—To make rules for the government and regulation of the land and naval forces :—To provide for calling forth the militia to execute the laws of the union, ſuppreſs inſurrections and repel invaſions :—To provide for organizing, arming, and diſciplining the militia, and for governing ſuch part of them as may be employed in the ſervice of the United States, reſerving to the States reſpectively, the appointment of the officers, and the authority of training the militia, according to the diſcipline preſcribed by Congreſs :—To exerciſe excluſive legiſlation in all caſes whatſoever, over ſuch diſtrict, (not exceeding ten miles ſquare) as may, by ceſſion of particular States, and the acceptance of Congreſs, become the ſeat of the government of the United States, and to exerciſe like authority over all places purchaſed by the conſent of the Legiſlature of the State in which the ſame ſhall be for the erection of forts, magazines, arſenals, dock-yards, and other needful buildings ; and to make all laws which ſhall be neceſſary and proper for carrying into execution, the foregoing powers, and all other powers veſted by this Conſtitution in the government of the United States, or in any department or officer thereof.

RESTRICTIONS UPON CONGRESS.

SECTION IX.

THE migration or importation of ſuch perſons as any of the States now exiſting, ſhall think proper to admit, ſhall not be prohibited by the Congreſs, prior to the year one thouſand eight hundred and eight, but a tax or duty may be impoſed on ſuch importation, not exceeding *ten dollars* for each perſon.

The privilege of the writ of *habeas corpus* ſhall not be ſuſpended, unleſs when in caſes of rebellion or invaſion, the publick ſafety may require it.

No bill of attainder or *ex poſt facto* law ſhall be paſſed.

No capitation, or other direct tax, ſhall be laid, unleſs in proportion to the cenſus or enumeration herein before directed to be taken.

No tax or duty ſhall be laid on articles exported from any State. No preference ſhall be given by any regulation of commerce or revenue to the ports of one State over thoſe of another ; nor ſhall veſſels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No monies ſhall be drawn from the Treaſury but in conſequence of appropriations made by law ; and a regular ſtatement and account of receipts and expenditures of all publick money ſhall be publiſhed from time to time.

No title of nobility ſhall be granted by the United States : And no perſon holding any office of profit or truſt under them, ſhall, without the conſent of the Congreſs, accept of any preſent, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign State.

RESTRICTIONS UPON RESPECTIVE STATES.

SECTION X.

NO State ſhall enter into any treaty, alliance, or confederation; grant letters of marque and repriſal; coin money; emit bills of credit; make any thing but gold and ſilver coin a tender in payment of debts; paſs any bill of attainder, *ex poſt facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No State ſhall, without the conſent of the Congreſs, lay any impoſts or duties on imports or exports, except what may be abſolutely neceſſary for executing its inſpection laws; and the net produce of all duties and impoſts, laid by any State on imports, or exports, ſhall be for the uſe of the Treaſury of the United States; and all ſuch laws ſhall be ſubject to the reviſion and controul of the Congreſs. No State ſhall, without the conſent of Congreſs, lay any duty of tonage, keep troops, or ſhips of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unleſs actually invaded, or in ſuch eminent danger as will not admit of delay.

EXECUTIVE POWER.

ARTICLE III.

PRESIDENT.

SECTION I.

THE Executive power ſhall be veſted in a PRESIDENT of the United States of *America*. He ſhall hold his office during the term of four years, and together with the Vice-Preſident choſen for the ſame term, be elected as follows.

Each State ſhall appoint, in ſuch manner as the Legiſlature thereof may direct, a number of Electors, equal to the whole number of Senators and Repreſentatives to which the State may be entitled in the Congreſs: But no Senator or Repreſentative, or perſon holding an office of truſt or profit under the United States, ſhall be appointed an Elector.

The Electors ſhall meet in their reſpective States, and vote by ballot for two perſons, of whom one at leaſt ſhall not be an inhabitant of the ſame State with themſelves. And they ſhall make a liſt of all the perſons voted for, and of the number of votes for each; which liſt they ſhall ſign and certify, and tranſmit ſealed to the ſeat of the government of the United States, directed to the Preſident of the Senate. The Preſident of the Senate ſhall, in the preſence of the Senate and Houſe of Repreſentatives, open all the certificates, and the votes ſhall then be counted. The perſon having the greateſt number of votes ſhall be the Preſident, if ſuch number be a majority of the whole number of Electors appointed: And if there be more than one

one who have ſuch majority, and have an equal number of votes, then the Houſe of Repreſentatives ſhall immediately chuſe by ballot one of them for Preſident; and if no perſon have a majority, then from the five higheſt on the liſt, the ſaid Houſe ſhall in like manner chuſe the Preſident. But in chuſing the Preſident, the votes ſhall be taken by States, the repreſentation from each State having one vote; a quorum for this purpoſe ſhall conſiſt of a member or members from two thirds of the States, and a majority of all the States ſhall be neceſſary to a choice. In every caſe, after the choice of the Preſident, the perſon having the greateſt number of votes of the Electors, ſhall be the Vice-Preſident. But if there ſhould remain two or more who have equal votes, the Senate ſhall chuſe from them by ballot the Vice-Preſident.

The Congreſs may determine the time of chuſing the electors, and the day on which they ſhall give their votes; which day ſhall be the ſame throughout the United States.

No perſon except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Conſtitution, ſhall be eligible to the office of Preſident; neither ſhall any perſon be eligible to that office, who ſhall not have attained to the age of thirty-five years, and been fourteen years a reſident within the United States.

In caſe of the removal of the Preſident from office, or of his death, reſignation, or inability to diſcharge the powers and duties of the ſaid office, the ſame ſhall devolve on the Vice-Preſident, and the Congreſs may by law provide for the caſe of removal, death, reſignation or inability, both of the Preſident and Vice-Preſident, declaring what officer ſhall then act as Preſident, and ſuch officer ſhall act accordingly, until the diſability be removed, or a Preſident ſhall be elected.

The Preſident ſhall, at ſtated times, receive for his ſervices, a compenſation, which ſhall neither be increaſed nor diminiſhed during the period for which he ſhall have been elected, and he ſhall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he ſhall take the following oath or affirmation:

"I do ſolemnly ſwear (or affirm) that I will faithfully execute the office of Preſident of the United States, and will to the beſt of my ability, preſerve, protect and defend the Conſtitution of the United States."

SECTION II.

The Preſident ſhall be Commander in Chief of the army and navy of the United States, and of the militia of the ſeveral States, when called into the actual ſervice of the United States; he may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any ſubject relating to the duties of their reſpective offices, and he ſhall have power to grant reprieves and pardons for offences againſt the United States, except in caſes of impeachment.

He ſhall have power, by and with the advice and conſent of the Senate, to make treaties, provided two-thirds of the Senators preſent concur: and he ſhall nominate, and by and with the advice and conſent of the Senate, ſhall appoint Ambaſſadors, other publick Miniſters and Conſuls, Judges of the Supreme Court, and all other officers of the United States, whoſe appointments are not herein otherwiſe provided for, and which ſhall be eſtabliſhed by law. But the Congreſs may by law veſt the appointment of ſuch inferior officers as they think proper, in the Preſident alone, in the Courts of law, or in the heads of departments.

The Preſident ſhall have power to fill up all vacancies that may happen during the receſs of the Senate, by granting commiſſions which ſhall expire at the end of their next ſeſſion.

SECTION III.

He ſhall from time to time give to the Congreſs information of the ſtate of the union, and recommend to their conſideration, ſuch meaſures as he ſhall judge neceſſary and expedient; he may, on extraordinary occaſions, convene both Houſes, or either of them, and in caſe of diſagreement between them, with reſpect to the time of adjournment, he may adjourn them to ſuch time as he ſhall think proper; he ſhall receive Ambaſſadors and other publick Miniſters; he ſhall take care that the laws be faithfully executed, and ſhall commiſſion all the officers of the United States.

SECTION IV.

The Preſident, Vice-Preſident and all civil officers of the United States, ſhall be removed from office on impeachment for, and conviction of treaſon, bribery, or other high crimes and miſdemeanours.

ARTICLE III.

JUDICIARY POWER.

SECTION I.

THE Judicial power of the United States, ſhall be veſted in one Supreme Court, and in ſuch inferior Courts as the Congreſs may from time to time ordain and eſtabliſh. The Judges, both of the Supreme and Inferior Court, ſhall hold their offices during good behaviour, and ſhall, at ſtated times, receive for their ſervices, a compenſation, which ſhall not be diminiſhed during their continuance in office.

SECTION II.

The Judicial power ſhall extend to all caſes, in law and equity, ariſing under this Conſtitution, the laws of the United States, and treaties made, or which ſhall be made, under their authority; to all caſes affecting Ambaſſadors, other publick Miniſters and Conſuls;

ſuls; to all caſes of admiralty and maritime juriſdiction; to controverſies to which the United States ſhall be a party; to controverſies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the ſame State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or ſubjects.

In all caſes affecting Ambaſſadors, other publick Miniſters and Conſuls, and thoſe in which a State ſhall be party, the Supreme Court ſhall have original juriſdiction. In all the other caſes before-mentioned, the Supreme Court ſhall have appellate juriſdiction, both as to law and fact, with ſuch exceptions, and under ſuch regulations as the Congreſs ſhall make.

The trial of all crimes, except in caſes of impeachment, ſhall be by jury; and ſuch trial ſhall be held in the State where the ſaid crimes ſhall have been committed; but when not committed within any State, the trial ſhall be at ſuch place or places as the Congreſs may by law have directed.

SECTION III.

Treaſon againſt the United States ſhall conſiſt only in levying war againſt them, or in adhering to their enemies, giving them aid and comfort. No perſon ſhall be convicted of treaſon, unleſs on the teſtimony of two witneſſes to the ſame overt act, or on confeſſion in open Court.

The Congreſs ſhall have power to declare the puniſhment of treaſon, but no attainder of treaſon ſhall work corruption of blood, or forfeiture, except during the life of the perſon attainted.

ARTICLE IV.

SECTION I.

Full faith and credit ſhall be given in each State to the publick acts, records, and judicial proceedings of every other State. And the Congreſs may by general laws, preſcribe the manner in which ſuch acts, records and proceedings ſhall be proved, and the effect thereof.

SECTION II.

The citizens of each State ſhall be entitled to all privileges and immunities of citizens in the ſeveral States.

A perſon charged in any State with treaſon, felony, or other crime, who ſhall flee from juſtice, and be found in another State, ſhall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having juriſdiction of the crime.

No perſon held to ſervice or labour in one State, under the laws thereof, eſcaping into another, ſhall, in conſequence of any law or regulation therein, be diſcharged from ſuch ſervice or labour, but ſhall be delivered up, on claim of the party to whom ſuch ſervice or labour may be due.

GENERAL REGULATIONS.

SECTION III.

NEW States may be admitted by the Congreſs into this Union; but no new State ſhall be formed or erected within the juriſdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the conſent of the Legiſlatures of the States concerned, as well as of the Congreſs.

The Congreſs ſhall have power to diſpoſe of and make all needful rules and regulations reſpecting the territory or other property belonging to the United States; and nothing in this Conſtitution, ſhall be ſo conſtrued, as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

The United States ſhall guarantee to every State in this Union a Republican form of government, and ſhall protect each of them againſt invaſion; and on application of the Legiſlature, or of the Executive (when the Legiſlature cannot be convened) againſt domeſtick violence.

AMENDMENTS PROVIDED.

ARTICLE V.

THE Congreſs, whenever two-thirds of both Houſes ſhall deem it neceſſary, ſhall propoſe amendments to this Conſtitution, or, on the application of the Legiſlatures of two-thirds of the ſeveral States, ſhall call a Convention for propoſing amendments, which, in either caſe, ſhall be valid to all intents and purpoſes, as part of this Conſtitution, when ratified by the Legiſlatures of three-fourths of the ſeveral States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be propoſed by the Congreſs; Provided, That no amendment which may be made prior to the year one thouſand eight hundred and eight, ſhall in any manner affect the firſt and fourth clauſes in the ninth Section of the firſt Article; and that no State, without its conſent, ſhall be deprived of its equal ſuffrage in the Senate.

GENERAL REGULATIONS.

ARTICEE VI.

ALL debts contracted, and engagements entered into, before the adoption of this Conſtitution, ſhall be as valid againſt the United States, under this Conſtitution, as under the Confederation.

This

This Conſtitution, and the Laws of the United States, which ſhall be made in purſuance thereof; and all Treaties made, or which ſhall be made, under the authority of the United States, ſhall be the Supreme Law of the land; and the Judges in every State, ſhall be bound thereby, any thing in the Conſtitution or Laws of any State to the contrary notwithſtanding.

The Senators and Repreſentatives before-mentioned, and the Members of the ſeveral State Legiſlatures, and all Executive and Judicial officers, both of the United States, and of the ſeveral States, ſhall be bound by oath or affirmation, to ſupport this Conſtitution; but no religious teſt ſhall ever be required as a qualification to any office or publick truſt under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, ſhall be ſufficient for the eſtabliſhment of this Conſtitution between the States ſo ratifying the ſame.

DONE in Convention, by the unanimous conſent of the STATES preſent, the ſeventeenth day of *September*, in the year of our LORD, one thouſand ſeven hundred and eighty-ſeven, and of the Independence of the UNITED STATES of AMERICA, the twelfth.

IN WITNESS WHEREOF, WE, have hereunto ſubſcribed our names.

GEORGE WASHINGTON, Preſident.

And Deputy from *Virginia*.

NEW-HAMPSHIRE,	JOHN LANGDON, NICHOLAS GILMAN.
MASSACHUSETTS,	NATHANIEL GORHAM, RUFUS KING.
CONNECTICUT,	WILLIAM SAMUEL JOHNSON, ROGER SHERMAN.
NEW-YORK,	ALEXANDER HAMILTON.
NEW-JERSEY,	WILLIAM LIVINGSTON, DAVID BREARLY, WILLIAM PATTERSON, JONATHAN DAYTON.
PENNSYLVANIA,	BENJAMIN FRANKLIN, THOMAS MIFFLIN, ROBERT MORRIS, GEORGE CLYMER, THOMAS FITZSIMONS, JARED INGERSOLL, JAMES WILSON, GOUVERNEUR MORRIS.

DELAWARE,	GEORGE READ, GUNNING BEDFORD, junior. JOHN DICKINSON, RICHARD BASSET, JACOB BROOM.
MARYLAND,	JAMES M'HENRY, DANIEL OF ST. THOMAS JENIFER, DANIEL CARROL,
VIRGINIA,	JOHN BLAIR, JAMES MADISON, junior.
NORTH-CAROLINA,	WILLIAM BLOUNT, RICHARD DOBBS SPAIGHT, HUGH WILLIAMSON,
SOUTH-CAROLINA,	JOHN RUTLEDGE, CHARLES C. PINCKNEY, CHARLES PINCKNEY, PIERCE BUTLER.
GEORGIA,	WILLIAM FEW, ABRAHAM BALDWIN.

Attest.

WILLIAM JACKSON, Secretary.

In CONVENTION, Monday, SEPTEMBER 17, 1787.

PRESENT.

The States of NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT, Mr. HAMILTON from NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA, and GEORGIA:

RESOLVED,

THAT the preceding Conſtitution be laid before the UNITED STATES in Congreſs aſſembled, and that it is the opinion of this Convention, that it ſhould afterwards be ſubmitted to a Convention of Delegates, choſen in each State by the People thereof, under the recommendation of its Legiſlature, for their aſſent and ratification; and that each Convention aſſenting to, and ratifying the ſame, ſhould give notice thereof to the UNITED STATES, in Congreſs aſſembled.

RESOLVED, That it is the opinion of this Convention, that as ſoon as the Conventions of nine States ſhall have ratified this Conſtitution, the United States in Congreſs aſſembled, ſhould fix a day on which Electors ſhould be appointed by the States which ſhall have ratified the ſame, and a day on which the Electors ſhould aſſemble to vote for the Preſident, and the time and place for commencing proceedings under this Conſtitution. That after ſuch publication, the Electors ſhould be appointed, and the Senators and Repreſentatives elected: That the Electors ſhould meet on the day fixed for the election of the Preſident, and ſhould tranſmit their votes certified

fied, ſigned, ſealed and directed, as the Conſtitution requires, to the Secretary of the United States in Congreſs aſſembled: That the Senators and Repreſentatives, ſhould convene at the time and place aſſigned: That the Senators ſhould appoint a Preſident of the Senate, for the ſole purpoſe of receiving, opening and counting the votes for Preſident; and, that after he ſhall be choſen, the Congreſs, together with the Preſident, ſhould without delay, proceed to execute this Conſtitution.

By the unanimous Order of the Convention,

GEORGE WASHINGTON, Preſident.

WILLIAM JACKSON, Secretary.

IN CONVENTION, SEPTEMBER 17, 1787.

SIR,

WE have now the honour to ſubmit to the conſideration of the United States in Congreſs aſſembled, that Conſtitution which has appeared to us the moſt adviſeable. The friends of our Country have long ſeen and deſired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correſpondent Executive and Judicial authorities, ſhould be fully and effectually veſted in the general government of the Union; but the impropriety of delegating ſuch extenſive truſts to one body of men is evident—Hence reſults the neceſſity of a different organization.

It is obviouſly impracticable in the federal government of theſe States, to ſecure all rights of independent ſovereignty to each, and yet provide for the intereſt and ſafety of all—Individuals entering into ſociety, muſt give up a ſhare of liberty to preſerve the reſt. The magnitude of the ſacrifice muſt depend as well on ſituation and circumſtance, as on the object to be obtained. It is at all times difficult to draw with preciſion, the line between thoſe rights which muſt be ſurrendered, and thoſe which may be reſerved; and on the preſent occaſion, this difficulty was increaſed by a difference among the ſeveral States as to their ſituation, extent, habits, and particular intereſts.

In all our deliberations on this ſubject, we kept ſteadily in our view, that which appears to us the greateſt intereſt of every true American, the conſolidation of our Union, in which is involved our proſperity, felicity, ſafety, perhaps our national exiſtence. This important conſideration, ſeriouſly and deeply impreſſed on our minds, led each State in the Convention to be leſs rigid on points of inferiour magnitude than might have been otherwiſe expected; and thus the Conſtitution which we now preſent, is the reſult of a ſpirit of amity, and of that mutual deference and conceſſion which the peculiarity of our political ſituation rendered indiſpenſible.

That it will meet the full and entire approbation of every State is not, perhaps, to be expected; but each will doubtleſs conſider that

that had her interests been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect,

We have the honour to be,

Sir, your Excellency's most obedient,

And humble servants,

GEORGE WASHINGTON, President.

By the unanimous Order of the Convention,
His Excellency the President of Congress.

United States in Congress assembled,

FRIDAY, SEPTEMBER 28, 1787.

PRESENT,

NEW-HAMPSHIRE, MASSACHUSETTS, CONNECTICUT, NEW-YORK, NEW-JERSEY, PENNSYLVANIA, DELAWARE, VIRGINIA, NORTH-CAROLINA, SOUTH-CAROLINA, and GEORGIA, and from MARYLAND, Mr. ROSS.

CONGRESS having received the Report of the Convention lately assembled in PHILADELPHIA,

Resolved, unanimously, That the said Report, with the Resolutions and Letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made and provided in that Case.

CHARLES THOMSON, Secretary.



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART I.

The Publick and Private Rights of Perſons.

An Act for regulating Towns, ſetting forth their Power, and for the Choice of Town Officers, and for repealing all Laws heretofore made for that Purpoſe.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the bounds of all townſhips ſhall be, and remain as heretofore granted, ſettled and eſtabliſhed. And to prevent an interference of juriſdiction, the lines between towns ſhall be run, and the marks renewed within three years from the laſt day of *March* inſtant, and once every five years forever after, by two or more of the ſelectmen of each town, or ſuch other perſons as they ſhall in writing appoint, to run and renew the ſame; and their proceedings, after every ſuch renewal of boundaries, ſhall be recorded in the reſpective town books. The ſelectmen of the moſt ancient town to give notice in writing unto the ſelectmen of the adjoining town, of the time and place of meeting for ſuch perambulation, ten days beforehand; and the ſelectmen who ſhall neglect their duty in notifying or attending, either perſonally or by their ſubſtitutes, to perambulate the line, at the time and place aſſigned as aforeſaid, ſhall ſeverally forfeit and pay the ſum of *five pounds*, two thirds to the uſe of the town which ſhall comply with their duty as

Lines between towns to be run, and marks renewed, once in five years.

as aforeſaid, and the other third part unto any two or more of the ſelectmen of the town ſo complying, who are hereby empowered to inform or ſue therefor, in the Court of Common Pleas for the ſame county, at any time within two years after the forfeiture ſhall be incurred, and not afterwards.

Freeholders and other inhabitants of towns, ſhall meet annually for the choice of town officers.

II. *And be it further enacted by the authority aforeſaid*, That the freeholders and other inhabitants of each town in this government, who ſhall pay to one ſingle tax, beſides the poll or polls, a ſum equal to two thirds of a ſingle poll tax, ſhall, in the month of *March* or *April*, annually, meet and aſſemble at ſuch time and place, in the ſame town, as they ſhall be notified to attend, by the conſtable or conſtables of the town, or ſuch others as the ſelectmen ſhall appoint to notify the ſame; and the ſaid freeholders, and other inhabitants, ſhall then and there, by a major vote, chooſe a clerk (who ſhall be under oath truly to record all votes paſſed in ſuch and other town-meetings during the year, and until another clerk ſhall be choſen and ſworn in his ſtead, and alſo faithfully to diſcharge all the other duties of his ſaid office) three, five, ſeven or nine able and diſcreet perſons, of good converſation, inhabiting in the town, to be ſelectmen or townſmen, and overſeers of the poor, where other perſons ſhall not be particularly choſen to that office (which any town may do if they ſhall think it neceſſary and convenient) three or more aſſeſſors, two or more judicious perſons for fence-viewers, treaſurer, ſurveyors of highways, ſurveyors of lumber, wardens, tything-men, ſealers of leather, meaſurers of wood, clerks of the market, conſtables, and other uſual town-officers; the ſaid officers to be choſen by ballot, or ſuch other method as the voters agree upon. And the town-clerk, or two of the ſelectmen, ſhall forthwith make out a liſt of the names of all thoſe who ſhall be then choſen into office, of whom an oath is by law required, and deliver the ſame to ſome conſtable or conſtables of the ſame town, together with a warrant to him or them directed, who is hereby required, within three days after receiving ſuch warrant, to notify and ſummon each of the ſaid perſons to appear before the town-clerk, within ſeven days from the time of ſuch notice, to take the oath by law preſcribed to the office into which they are ſeverally choſen; and every perſon who ſhall neglect to appear before the town-clerk, within the ſaid ſeven days, and take the oath of office unto which he is choſen and ſummoned as aforeſaid, which oath the town-clerk is hereby authorized to adminiſter (unleſs ſuch perſon is by law exempted from ſerving in the office) ſhall forfeit and pay to him or them that will inform or proſecute therefor, the ſum of *thirty ſhillings*, except conſtables and ſuch other officers, for whoſe neglect a different penalty is provided, two thirds for the uſe of the town, and the other third to the uſe of the proſecutor.

Perſons choſen into office, to be ſummoned to appear before the town-clerk, to take the oath preſcribed by law.

Forfeiture for neglecting to appear.

Proviſo.

Provided always, That any perſon who ſhall take the oath of office before a Juſtice of the Peace, and file a certificate thereof with the town-clerk, within the ſaid ten days, ſhall be exempted from the ſaid fine; and every conſtable ſhall, at the expiration of the term of ten days from the time of receiving ſuch warrant, make a return into the clerk's office of the ſame town, of the warrant to him committed

mitted as aforeſaid, with his doings thereon, for a neglect of which, he ſhall forfeit and pay the ſum of *forty ſhillings*, to be to the uſe of the town; the conſtable to be allowed ſuch reaſonable ſum for his ſervices upon this and other town buſineſs, as the inhabitants ſhall agree upon.

Perſons exempted from ſerving as Conſtables.

III. *And be it further enacted*, That no perſon ſhall be obliged to ſerve in any town office two years ſucceſſively; nor ſhall any perſon in commiſſion for any office, civil or military, church-officer, member of the Council, Senate or Houſe of Repreſentatives, for the time being, nor any one who has ſerved in the office of a conſtable or collector of any town, diſtrict, pariſh or precinct, within ſeven years, be obliged to ſerve in the office of conſtable; and every perſon choſen to the office of conſtable, and not exempted as aforeſaid, who ſhall refuſe to take the oath to that office preſcribed, and to ſerve therein, if he be able in perſon to execute the ſame, ſhall forfeit and pay to the uſe of the town, the ſum of *five pounds*, and if in *Boſton*, *Salem*, or *Newbury-Port*, *ten pounds*, and ſhall, if preſent, forthwith declare his acceptance or refuſal; and in caſe he ſhall not declare his acceptance, the town ſhall proceed to a new choice, and ſo from time to time until one ſhall accept and be ſworn; and any perſon who ſhall be preſent and declare his refuſal to ſerve in the office of conſtable, or who ſhall neglect, after being ſummoned as aforeſaid, to take the oath of office, for the ſpace of ſeven days next after ſuch ſummons, and ſhall alſo neglect to pay the fine aforeſaid, ſhall, upon the application of the town-treaſurer, be ſummoned before the Court of General Seſſions of the Peace in the county in which ſuch town lieth; and a certificate under the hand of the clerk, or two of the ſelectmen, certifying that ſuch perſon was legally choſen to the office of conſtable, ſhall be admitted as evidence of the fact; and if the perſon ſummoned ſhall make default, or appearing, ſhall not ſhew ſufficient cauſe to the Court for his refuſal, the Court ſhall order a warrant under the ſeal thereof, directed to any of the conſtables of the ſame town then in office, to levy the fine by diſtreſs and ſale of the offenders goods and chattels, returning the overplus, (if any be) together with the coſts ariſing on ſuch proſecution; and for want of goods and chattels, to commit the delinquent to priſon until the ſame ſhall be paid. And the town-clerk, ſhall make a record of ſuch perſons as ſhall from time to time, be ſworn into office before him, or of ſuch as ſhall file certificates of their being ſworn as aforeſaid.

Perſons not exempted, refuſeing to ſerve.

Forfeiture.

Town-Clerk to record ſuch as are ſworn into office.

In caſe of vacancy in any office, towns may proceed to a new choice.

IV. *And be it further enacted*, That when by reaſon of non-acceptance, death or removal of any perſon choſen to office in any town, at the annual meeting for the choice of town officers, or at any other time, or by reaſon of a perſon's becoming *non compos*, there is a vacancy, or want of ſuch officers, the town, being orderly aſſembled in the manner this act directs, may proceed to a new choice of officers to ſupply and fill up ſuch vacancy; and the perſon or perſons thus choſen and ſworn before the town-clerk, or a Juſtice of the Peace, (in caſe an oath of office is by law required) ſhall have the ſame power and authority to diſcharge the duties of the office, as though choſen at the annual meeting for the choice of town-officers.

And

V. *And be it furtker enacted by the authority aforeſaid*, That when there ſhall be occaſion of a town-meeting, the conſtable or conſtables, or ſuch other perſon as ſhall be appointed for the purpoſe, by warrant from the ſelectmen, or the major part of them, ſhall ſummon and notify the inhabitants of ſuch town to aſſemble at ſuch time and place, in the ſame town, as the ſelectmen ſhall order, the manner of ſummoning the inhabitants to be ſuch as the town ſhall agree upon; and when ten or more of the freeholders of a town ſhall ſignify in writing their deſire to have any matter or thing inſerted in a warrant for calling a meeting, the ſelectmen are hereby required to inſert the ſame in the next warrant they ſhall iſſue for a meeting, or call a meeting for the expreſs purpoſe of conſidering thereof; and no matter or thing ſhall be acted upon in ſuch a manner as to have any legal operation whatever, unleſs the ſubject matter thereof be inſerted in the warrant for calling the meeting; and in caſe the ſelectmen ſhall unreaſonably deny to call a meeting upon any publick occaſion, any ten or more of the freeholders of ſuch town may apply to a Juſtice of the Peace within and for the ſame county, who is hereby authorized and empowered to iſſue his warrant under his hand and ſeal, directed to the conſtable or conſtables of the town, if any ſuch there be, otherwiſe to any of the freeholders applying therefor, directing him or them to notify and warn the inhabitants qualified to vote in town affairs, to aſſemble at ſuch time and place in the ſame town as the ſaid Juſtice ſhall in his ſaid warrant direct, and for the purpoſe in the ſame warrant expreſſed. And when by reaſon of death, removal or reſignation of ſelectmen, a major part of the number originally choſen ſhall not remain in office within any town, in every ſuch caſe, a major part of the ſurvivors, or of ſuch as remain in office, ſhall have the ſame power to call a town-meeting as a major part of the whole number firſt choſen.

Manner of calling town meetings.

When Juſtices may call town-meeting.

VI. *And be it further enacted by the authority aforeſaid*, That at every town-meeting, a moderator ſhall be firſt choſen by a majority of votes, who ſhall be thereby empowered to manage and regulate the buſineſs of the meeting; and when a vote, declared by the moderator, ſhall immediately after ſuch declaration, be ſcrupled or queſtioned by ſeven or more of the voters preſent, the moderator ſhall make the vote certain, by polling the voters, or ſuch other way, as the meeting ſhall deſire. And no perſon ſhall ſpeak in the meeting before leave firſt had and obtained from the moderator, nor when any other perſon is orderly ſpeaking; and all perſons ſhall be ſilent at the deſire of the moderator, on pain of forfeiting *five ſhillings* for the breach of every ſuch order, to the uſe of the town: and if any perſon ſhall, after notice from the moderator, perſiſt in his diſorderly behaviour, then it ſhall be lawful for the moderator to direct ſuch diſorderly perſon to withdraw from the meeting; and ſuch diſorderly perſon, upon his refuſal or neglect to withdraw, ſhall forfeit and pay a fine of *twenty ſhillings*, to the uſe of the ſame town; and may alſo, by direction of the moderator, be carried out of the meeting by ſome conſtable of ſaid town, and put into the ſtocks, cage, or ſome other place of confinement, and there be detained for the

Town-meetings regulated.

the ſpace of three hours, unleſs the town-meeting ſhall ſooner adjourn or diſſolve. And all ſuits and informations for fines incurred by a breach of this act, not exceeding *forty ſhillings*, may be heard and determined before any Juſtice of the Peace in the ſame county, not an inhabitant of the ſame town, unto whom the penalty or any part thereof is given, who, upon conviction, may enforce the payment thereof by a ſimilar proceſs, as is herein preſcribed in the Court of General Seſſions of the Peace for perſons who refuſe to ſerve in the office of conſtable.

Provided always, That town-meetings for the choice of governour, lieutenant-governour, and ſenators, ſhall be regulated as the conſtitution directs, and for the choice of repreſentatives as is otherwiſe by law preſcribed; any thing in this act contained to the contrary notwithſtanding. And the moderator of any town-meeting, choſen as aforeſaid, is hereby authorized, in caſe no Juſtice of the Peace be preſent, to adminiſter to the clerk, in open town-meeting, the oath by law preſcribed to the ſame office. Proviſo.

VII. *And be it further enacted by the authority aforeſaid*, That the freeholders, and other inhabitants of each reſpective town, qualified as aforeſaid, at the annual meeting, for the choice of town-officers, or at any other town-meeting regularly warned, may grant and vote ſuch ſum or ſums of money, as they ſhall judge neceſſary for the ſettlement, maintenance and ſupport of the miniſtry, ſchools, the poor, and other neceſſary charges, ariſing within the ſame town; to be aſſeſſed upon the polls and property within the ſame, as by law provided; and they are alſo hereby empowered to make and agree upon ſuch neceſſary rules, orders and by-laws, for the directing, managing and ordering the prudential affairs of ſuch town, as they ſhall judge moſt conducive to the peace, welfare and good order thereof; and to annex penalties for the obſervance of the ſame, not exceeding *thirty ſhillings* for one offence; to enure to ſuch uſes as they ſhall therein direct; provided they be not repugnant to the general laws of the government; and provided alſo, ſuch orders and by-laws ſhall have the approbation of the Court of General Seſſions of the Peace of the ſame county: And may alſo allow and approve of any town or private way laid out by the ſelectmen of the ſame town; or alter or diſcontinue any town or private way, heretofore laid out and improved as ſuch, when it ſhall appear that the ſame is unneceſſary for the inhabitants of ſuch town. *Saving always*, to any perſon aggrieved, or who thinks himſelf injured, liberty of applying for remedy to the Court of General Seſſions of the Peace in the ſame county, who are hereby empowered and directed, to enquire into and determine the matter by a jury, thereunto appointed, as as well with reſpect to the neceſſity and convenience, by ſuch diſcontinuance, laying out, or alteration, as to the damage, that may happen or accrue, to any particular perſon or perſons thereby; and thereupon to aſſeſs damages for the party injured, to be paid by ſuch town; unleſs it appears, that the perſon on whoſe behalf application has been made, had no juſt cauſe of complaint; in which caſe the complainant ſhall pay all ſuch coſts and charges as may ariſe by

Towns empowered to grant & aſſeſs money for neceſſary charge

To make by-laws, &c.

Proviſo.

Court of Seſſions may approve or diſcontinue any town or private way laid out by ſelectmen.

ſuch application to the Court of Seſſions. And the verdict of a jury being received and recorded, ſhall be final and concluſive. *Provided*, ſuch application be made to the Court of General Seſſions of the Peace, within twelve months after ſuch way is approved, altered, or diſcontinued as aforeſaid, and not otherwiſe.

Inhabitants of every town, declared a body politick.

VIII. *And be it further enacted by the authority aforeſaid*, That the inhabitants of every town within this government, are hereby declared to be a body politic and corporate; and as ſuch, may commence and proſecute any ſuit or action in any Court proper to try the ſame; and may alſo defend any ſuit or action commenced againſt them, and for this purpoſe, the ſaid inhabitants, qualified and convened in manner aforeſaid, may nominate and appoint one or more agents or attornies. The choice of the agent or attorney certified by the town-clerk, ſhall be deemed and taken ſufficient evidence of ſuch appointment. And when any ſuit ſhall be commenced againſt any town, (or other body corporate) a copy of the writ or original ſummons, or ſuch other legal proceſs as may iſſue againſt them, ſhall be left with the clerk of ſuch town, or with one or more principal inhabitants thereof (or with the clerk or ſome principal member of the body corporate) thirty days at leaſt before the day of the ſitting of the Court, unto which the ſame ſhall be returnable.

Privileges and powers of diſtricts.

IX. *And be it further enacted by the authority aforeſaid*, That all places incorporated by the name of diſtricts, before the firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven, are hereby declared to be towns to every intent and purpoſe whatever; and places incorporated by the name of diſtricts ſince the ſame firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven, or ſuch places as may hereafter be incorporated by the name of diſtrict, are and ſhall be entitled to all the privileges, and veſted with all the powers in this act expreſſed, as amply to every intent and purpoſe, as they could have been if expreſsly named herein.

And whereas in divers laws, proviſion is made relating to the annual meetings in *March*, which it is neceſſary ſhould be extended to the meetings holden in the month of *April*, in caſe the annual meeting of any town ſhould be holden in that month:

Matters and things, by law directed to be done at March meetings, may be tranſacted in April.

X. *Be it therefore enacted by the authority aforeſaid*, That all matters and things, which by any law or reſolve of this Commonwealth, are directed to be done and tranſacted at a town-meeting in *March*, may hereafter be done, and tranſacted, at a town-meeting in *April*; any thing in ſuch law or reſolve, to the contrary notwithſtanding.

XI. *And be it further enacted by the authority aforeſaid*, That all laws heretofore made for the purpoſes mentioned in this act, be, and they hereby are repealed, and rendered null and void.

[This act paſſed *March* 23, 1786.]

An Act impowering Selectmen to call Town-Meetings for the Choice of Repreſentatives.

WHEREAS by the conſtitution or frame of government of this Commonwealth, chapter firſt, ſection third, article fifth, it is declared, "That the members of the Houſe of Repreſentatives ſhall be choſen annually, in the month of May, *ten days at leaſt before the laſt Wedneſday of that month;" but no proviſion is made for convening the voters, for regulating the meetings, or for making returns of the perſons elected:* Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That the ſelectmen for the time being, or the major part of them, in each and every town, authoriſed to chuſe a repreſentative in this Commonwealth, be, and they are hereby empowered and directed to cauſe the inhabitants of their towns reſpectively, qualified according to the conſtitution, to be annually warned in due courſe of law, to meet at ſuch time and place as they ſhall appoint, (being ten days at leaſt before the ſaid laſt Wedneſday in *May*) for the purpoſe of chooſing one or more repreſentatives agreeable to ſaid conſtitution; and ſaid ſelectmen ſhall preſide at and regulate ſaid meeting, and cauſe the perſon or perſons ſo choſen by the major part of the voters preſent, to be notified of ſaid choice, as ſoon as may be, by a conſtable of ſaid town, and they ſhall make return thereof into the Secretary's office, on or before the ſaid laſt Wedneſday in *May* annually, in form following, *viz.* Selectmen of the ſeveral towns in this Commonwealth authoriſed to call town meetings for the choice of repreſentatives, annually. Selectmen to preſide at ſaid meetings, and make return into the Secretary's office.

Purſuant to a law of this Commonwealth, the freeholders and other inhabitants of the town of qualified according to the conſtitution, upon due warning given, met together the day of and then did elect to repreſent them in the General Court appointed to be convened and held for the government's ſervice at the ſtate-houſe in *Boſton*, or ſuch other place as may hereafter be appointed for the General Court to convene at, agreeably to the conſtitution, upon the laſt Wedneſday of *May*, the ſaid perſon being choſen by the major part of the electors preſent at ſaid meeting. Dated in aforeſaid, the day of in the year of our Lord and in the year of the Independence of the United States of *America*. Form of the return.

} Selectmen of

The perſon choſen as aforeſaid was notified thereof and ſummoned to attend, by me,

} Conſtable of

II. *Be it further enacted,* That any ſelectmen or conſtable neglecting his duty as herein deſcribed, or any part thereof, ſhall for each neglect forfeit and pay the ſum of *ten pounds*, to be recovered in an action of debt before any Court proper to try the ſame; which ſum ſhall be for the benefit of the perſon ſuing for the ſame. Penalty for neglect of duty.

[This act paſſed *April* 20, 1781.]

An

An Act regulating Pariſhes and Precincts, and the Officers thereof.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the bounds and limits of precincts and pariſhes, as they have been formerly ſettled, be, and hereby are confirmed and eſtabliſhed until they ſhall be otherwiſe ordered by the General Court. And the inhabitants of each reſpective pariſh and precinct, who ſhall pay in one tax, excluſive of the poll or polls, a ſum equal to two thirds of a ſingle poll tax, ſhall, in the month of *March* or *April*, annually, meet and aſſemble together at ſuch time and place, in the ſame pariſh or precinct, as they ſhall be notified to attend, by the collector thereof, or ſuch other perſon as the aſſeſſors thereof ſhall appoint to notify the ſame; and the ſaid inhabitants ſhall then and there, by a major vote, by ballot, or ſuch other method as they may determine convenient, chooſe a clerk, who ſhall be under oath truly to record all votes paſſed in the ſame, or any other regular meeting of the corporation, during the time he ſhall remain in office; two or more able and judicious perſons for aſſeſſors, a treaſurer, collector and other uſual pariſh or precinct officers. And no perſon in commiſſion for any office, civil or military, church officer, member of the Council, Senate, and Houſe of Repreſentatives, for the time being, nor any one who has ſerved in the office of conſtable or collector, of any town, diſtrict, pariſh or precinct, within the term of ſeven years, ſhall be obliged to ſerve in the office of collector. And every perſon choſen to the office of collector, and not exempted as aforeſaid, if he be able in perſon to execute the ſame, and of the ſame denomination of Chriſtians as thoſe of the major part of the pariſh or precinct who ſhall chooſe him, who ſhall refuſe to take the oath to that office preſcribed, and to ſerve therein, ſhall forfeit and pay to the uſe of the ſame precinct, or pariſh, the ſum of *three pounds*. And the perſon choſen collector ſhall, if preſent, forthwith declare his acceptance or refuſal; and in caſe of non-acceptance the pariſh or precinct ſhall proceed to a new choice, and ſo from time to time until one ſhall accept and be ſworn: and any perſon ſo choſen, who ſhall be preſent, and ſhall not declare his acceptance of the office of collector, or who ſhall neglect after being ſummoned by a conſtable or any other perſon whom the clerk or aſſeſſors may appoint for that purpoſe, before the clerk, to take the oaths of office, for the ſpace of ſeven days next after being notified or ſummoned, as aforeſaid (which oath, as well as the oath of all other pariſh or precinct officers, the clerk for the time being is hereby authoriſed and empowered to adminiſter) and ſhall neglect to pay the fine aforeſaid, may be compelled to pay the ſame by the ſame mode of proceſs, in the Court of General Seſſions of the Peace, that fines may by law be recovered of perſons refuſing to ſerve in the office of conſtable.

Bounds and limits of precincts and pariſhes, eſtabliſhed.

Inhabitants to meet annually, for the choice of officers.

Certain perſons exempted from ſerving in the office of collector.

Perſons not exempted, refuſing to ſerve.

Penalty.

Fines, how recovered.

II. *And be it further enacted by the authority aforeſaid,* That aſſeſſors of precincts or pariſhes ſhall be empowered to manage their prudentials,

prudentials, unleſs a committee ſhall ſpecially be appointed for that purpoſe, which any precinct or pariſh is empowered to chooſe if they think proper; and the ſaid committee, where any ſuch ſhall be choſen, and the aſſeſſors where no ſuch committee ſhall be appointed, ſhall have like power and authority in all reſpects for calling pariſh or precinct-meetings as ſelectmen by law have for calling town-meetings; and in caſe of a vacancy in any pariſh or precinct office, choſen in *March* or *April*, the ſame vacancy may be filled at a pariſh or precinct-meeting regularly notified, at any other ſeaſon of the year. And the moderator of a pariſh or precinct-meeting ſhall have the like power and authority in governing the meeting as the like officer by law has in a town-meeting; and perſons miſbehaving in pariſh or precinct-meetings ſhall be ſubjected to ſimilar puniſhments, to the uſe of the pariſh or precinct, as perſons miſbehaving in town-meeting; and the penalties to be recovered in the ſame manner. And the moderator, in caſe no Juſtice of the Peace is preſent, may alſo adminiſter in open meeting the oath of office to the clerk thereof. And when ten or more of the qualified voters of any precinct or pariſh ſhall ſignify in writing their deſire to have any matter or thing inſerted in a warrant for calling a meeting, it ſhall be the duty of the aſſeſſors to inſert the ſame in the next warrant they ſhall iſſue for that purpoſe; and no matter or thing ſhall be acted upon in ſuch a manner as to have any legal operation whatever, unleſs the ſubject matter thereof ſhall be inſerted in the warrant for calling the meeting. And in caſe the aſſeſſors ſhall unreaſonably refuſe to call a meeting, or a pariſh or precinct ſhall have no aſſeſſors within it to call one, or not a major part of the aſſeſſors or committee which any pariſh may agree upon to be choſen, any Juſtice of the Peace for the ſame county, upon the application of ten or more of the voters in the pariſh or precinct, may call a meeting, in the ſame manner as a Juſtice of the Peace is by law authorized to call a town-meeting.

Aſſeſſors empowered to manage prudentials unleſs a committee ſhall be appointed.

Pariſh and precinct meetings regulated.

Juſtices of the Peace may call a meeting in certain caſes.

III. *And be it further enacted by the authority aforeſaid*, That the qualified voters aforeſaid of any pariſh or precinct, at the annual meeting in *March* or *April*, or at any other pariſh or precinct-meeting regularly notified, at leaſt ſeven days before the holding thereof, may grant and vote ſuch ſum or ſums of money as they ſhall judge neceſſary for the ſettlement, maintenance, and ſupport of miniſters or publick teachers of religion; for the building or repairing of houſes of publick worſhip, and all other neceſſary pariſh or precinct charges, to be aſſeſſed on the polls and property within the ſame as by law provided. And the inhabitants of each reſpective pariſh and precinct are hereby declared to be a body corporate, and as ſuch may commence and proſecute any action or ſuit to final judgment and execution, in any Court proper to hear and determine the ſame, and may alſo defend any ſuit or action that may be brought againſt them; for which purpoſes they may conſtitute one or more agents or attornies, in the ſame manner as towns may conſtitute and appoint agents; and the evidence of their appointment may be aſcertained in the ſame manner.

Qualified voters may grant money for the ſupport of miniſters, &c.

Inhabitants of pariſhes & precincts, declared to be a body corporate.

IV. *And be it further enacted by the authority aforeſaid*, That where any town or diſtrict conſiſting of but one pariſh only, has

been or hereafter ſhall be divided or made into two or more precincts or pariſhes, any engagements or contracts entered into by ſuch town or diſtrict, before ſuch diviſion, of a precinct or parochial nature ſolely, ſhall not by ſuch diviſion be conſidered as releaſed, cancelled, or extinguiſhed; but the ſame ſhall remain in full force, and be obligatory on the inhabitants reſiding, and the eſtates lying within the limits of the firſt pariſh or precinct of the ſame town or diſtrict, who ſhall be deemed and taken as ſucceſſors to the town or diſtrict, ſo far as relates to precinct or parochial agreements and contracts, to every intent and purpoſe whatever. *Provided always*, That all debts of a precinct or parochial nature, that are or ſhall be in fact due and owing from any town or diſtrict, before a diviſion thereof into precincts or pariſhes, for ſervices or other matters actually done and performed, for the general benefit of the perſons who ſhall after be included in each of the precincts or pariſhes, ſhall in no reſpect be altered or devolved upon the firſt pariſh or precinct, as the ſucceſſors of the ſaid town or diſtrict, in its precinct or parochial capacity, any thing herein contained to the contrary notwithſtanding.

Engagements or contracts, of a parochial nature entered into before diviſion of towns into pariſhes or diſtricts ſhall remain in full force, after ſuch diviſion.

Proviſo.

V. *And be it further enacted by the authority aforeſaid*, That in all ſuch towns or diſtricts where one or more pariſhes or precincts ſhall be regularly ſet off from ſuch towns or diſtricts, the remaining part of ſuch town or diſtrict is hereby deemed, declared and conſtituted an entire, perfect and diſtinct pariſh or precinct, and ſhall be conſidered as the principal or firſt pariſh or precinct.

Remaining part of ſuch towns, ſhall be conſidered as the firſt or principal pariſh.

[This act paſſed *June* 28, 1786.]

An Act for Regulating Marriage and Divorce.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That no man or woman ſhall intermarry within the degrees hereafter named, *that is to ſay*:—

No man ſhall marry his	No woman ſhall marry her
Mother,	Father,
Grandmother,	Grandfather,
Daughter,	Son,
Son's Daughter,	Son's Son,
Daughter's Daughter,	Daughter's Son,
Step-Mother,	Step-Father,
Grandfather's Wife,	Grandmother's Huſband,
Son's Wife,	Daughter's Huſband,
Son's Son's Wife,	Son's Daughter's Huſband,
Daughter's Son's Wife,	Daughter's Daughter's Huſband,
Wife's Mother,	Huſband's Father,
Wife's Grandmother,	Huſband's Grandfather,
Wife's Daughter,	Huſband's Son,
Wife's Son's Daughter,	Huſband's Son's Son,
Wife's Daughter's Daughter,	Huſband's Daughter's Son,
Siſter,	Brother,
Brother's Daughter,	Brother's Son,
Siſter's Daughter,	Siſter's Son,
Father's Siſter,	Father's Brother,
Mother's Siſter,	Mother's Brother.

And

And if any man or woman ſhall intermarry within the degrees aforeſaid, every ſuch marriage ſhall be deemed, taken and adjudged inceſtuous, and ſhall be null and void; and the iſſue of all ſuch inceſtuous marriages ſhall be deemed, taken and adjudged illegitimate, and be ſubjected to all the legal diſabilities of ſuch iſſue. Marriages within the degrees named, deemed inceſtuous.

II. *And be it further enacted by the authority aforeſaid*, That all marriages, where either of the parties ſhall have a former wife or huſband living at the time of ſuch marriage, ſhall be abſolutely void, and no dower ſhall be aſſigned any widow in conſequence of ſuch marriage; and the iſſue thereof ſhall be deemed, taken and adjudged illegitimate, and be ſubject to all the legal diſabilities of ſuch iſſue. Marriages where either of the parties have a former wife or huſband living, ſhall be void.

III. *And be it further enacted by the authority aforeſaid*, That divorces from the bond of matrimony ſhall be decreed, in caſe the parties are within the degrees aforeſaid, or either of them had a former wife or huſband alive at the time of ſolemnizing ſuch ſecond marriage, or for impotency or adultery in either of the parties, and for no other cauſe; and that divorce from bed and board may and ſhall be granted for the cauſe of extreme cruelty in either of the parties. In what caſes divorces ſhall be decreed.

IV. *And be it further enacted by the authority aforeſaid*, That when it ſhall appear that the adultery or cruelty complained of is occaſioned by the colluſion of the parties, and done with an intention to procure a divorce, or that both parties have been guilty of adultery, in ſuch caſe, no divorce ſhall be decreed. In caſes of colluſion, no divorce ſhall be decreed.

V. *And be it further enacted*, That when a divorce ſhall be had for the cauſes of affinity, conſanguinity, or of impotency of either of the parties, the wife ſhall have reſtored to her all her lands, tenements and hereditaments; and a judgment may be paſſed for a reſtoration to her of all or ſuch part of the perſonal eſtate ſpecifically, or the value thereof, which hath come to her huſband's hands by force of the marriage, as the Juſtices of the Supreme Judicial Court, from all the circumſtances of the caſe, ſhall determine equitable; and they may make uſe of ſuch kind of proceſs to carry their judgment into effect, as ſhall be neceſſary; and the Court, in caſe they think proper, may compel the huſband to diſcloſe, on oath, what perſonal eſtate he hath received in right of his wife, and how the ſame hath been diſpoſed of, and what proportion thereof remained in his hands at the time of ſuch divorce: and when the divorce ſhall be for the cauſe of adultery committed by the huſband, the wife ſhall have her dower aſſigned her in the lands of the huſband, in the ſame manner as if ſuch huſband was naturally dead; and where the divorce ſhall be occaſioned by adultery committed by the wife, the huſband ſhall hold her perſonal eſtate forever, and her real eſtate during his natural life, in caſe they have had iſſue born alive of her body during the marriage, otherwiſe during her natural life only, if he ſhall ſurvive her. When divorces are had, for the cauſes of affinity or conſanguinity, what lands, &c. ſhall be reſtored.

Provided nevertheleſs, That the Court may allow her for her ſubſiſtence ſo much of ſuch perſonal or real eſtate as they ſhall judge neceſſary. Proviſo.

And whenever a decree of divorce from bed and board ſhall be made becauſe of the cruelty of the huſband, the wife, if there be no

iſſue

When they are had becauſe of cruelty of the huſband, what lands, &c. ſhall be reſtored to the wife.

iſſue living at the time of the divorce, ſhall be reſtored to all her lands, tenements and hereditaments, and be allowed out of his perſonal eſtate ſuch alimony as the Court ſhall think reaſonable, having regard to the perſonal property that came to the huſband by the marriage, and his ability; but if there be iſſue living at the time of the divorce, then the Court, with reſpect to ordering reſtoration, or granting alimony as aforeſaid, may do as they ſhall judge the circumſtances of the caſe may require; and upon application from either party, may, from time to time, make ſuch alterations therein as may be neceſſary. And in caſe a divorce ſhall be decreed for cruelty in the wife, whether there ſhall be iſſue or not of the marriage at the time of the divorce, the Court may order to her a reſtoration of the whole or ſuch part of her lands, tenements and hereditaments, and may alſo aſſign alimony as they may judge proper.

Penalty for cohabiting together after being divorced.

VI. *And be it further enacted by the authority aforeſaid*, If any perſons who ſhall be divorced for the cauſe either of affinity or conſanguinity, ſhall after ſuch divorce cohabit together, ſuch perſons ſo offending, ſhall be liable to all the pains and penalties provided by the laws then in being againſt inceſt; and if any perſons ſhall cohabit or live together in the ſame houſe after a divorce, for the cauſe of prior marriage or adultery, ſuch perſons ſhall be liable to all the pains and penalties provided by the laws then in being againſt adultery.

Proviſo.

Provided always, That no decree of divorce for or on account of adultery ſhall bar the iſſue of ſuch marriage from inheriting, but the queſtion of the right of ſuch child or children to inherit ſhall be tried and ſettled upon the principles of common law, in the ſame manner as though this act had never been made.

And whereas it is a great expence to the people of this State to be obliged to attend at *Boſton* upon all queſtions of divorce, when the ſame might be done within the counties where the parties live, and where the truth might be better diſcerned, by having the witneſſes preſent in Court:

Supreme Judicial Court to determine queſtions of divorce and alimony.

VII. *Be it therefore enacted by the authority aforeſaid*, That all queſtions of divorce and alimony ſhall be heard and tried by the Supreme Judicial Court holden for the county where the parties live, and that the decree of the ſame Court ſhall be final.

No cauſe of divorce or alimony ſhall be brought, unleſs a libel is filed in the clerk's office.

VIII. *And be it further enacted*, That no cauſe of divorce or alimony ſhall be brought before the ſame Court, unleſs the party ſueing or complaining ſhall file his or her libel in the office of the clerk of the ſaid Court, therein ſetting forth the cauſe of his or her complaint ſpecially, and ſhall cauſe the other party, if in this ſtate, to be ſerved with an atteſted copy of the ſame, and with a ſummon to appear at the Court fourteen days at leaſt before the ſitting of the ſaid Court where the cauſe is to be tried, otherwiſe in ſuch manner as the ſaid Court ſhall direct; and the ſaid Court ſhall have all the powers neceſſary to the conducting and finally iſſuing ſuch cauſes, according to the true intendment of this act.

[This act paſſed *March* 16, 1786.]

An Act for the orderly Solemnization of Marriages.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That every Juſtice of the Peace, within the county where he reſides, and every ſtated and ordained Miniſter of the Goſpel, in the town, diſtrict, pariſh or plantation where he reſides, ſhall be, and hereby is authorized and impowered to ſolemnize marriages between perſons, that may lawfully enter into that relation, when one or both of the perſons to be married, belong to, or are reſidents in the county where ſuch Juſtice reſides, or one, or both of them are inhabitants of, or reſidents in the town, diſtrict, pariſh, or plantation where ſuch miniſter reſides.

Juſtices of the Peace and Miniſters licenced to marry.

II. *And be it further enacted by the authority aforeſaid,* That when any ſettled and ordained Miniſter of the Goſpel is himſelf to be married, it ſhall be lawful for any other ſuch Miniſter within the ſame county, to marry the ſaid Miniſter. And alſo, when any religious ſociety ſhall be deſtitute of a ſettled and ordained Miniſter of the Goſpel, in caſe there ſhall not be ſuch a Miniſter, within the town, diſtrict or plantation, in which ſuch religious ſociety is, it ſhall be lawful for any ſuch Miniſter, within the ſame county, to join any perſon of ſuch town, diſtrict or plantation, in marriage, *provided* ſuch marriage be ſolemnized in the town, diſtrict or plantation where one of the parties to be married ſhall reſide.

Miniſters and others, how to be married in certain caſes.

III. *And be it further enacted by the authority aforeſaid,* That all perſons deſiring to be joined in marriage ſhall have ſuch their intentions publiſhed at three publick religious meetings, on different days, at three days diſtance excluſively, at leaſt from each other, in the town or diſtrict, wherein they reſpectively dwell, or ſhall have their intentions of marriage poſted up by the clerk of ſuch town or diſtrict, by the ſpace of fourteen days, in ſome publick place, within the ſame town or diſtrict, fairly written, and ſhall alſo produce to the Juſtice or Miniſter, who ſhall be deſired to marry them, a certificate of ſuch publiſhment, under the hand of the Clerk of ſuch town or diſtrict reſpectively; and alſo, that the intention of marriage hath been entered with him fourteen days, prior to the date of ſuch certificate; and where a male, under twenty-one years, or a female under eighteen years of age, is to be married, the conſent of the parent, guardian or other perſon, whoſe immediate care and government ſuch party is under, if within the Commonwealth, ſhall be firſt had to ſuch marriage. And in caſe the parties or either of them live in a town, diſtrict, or place where there ſhall be no Clerk, then publiſhment ſhall be made in the town or diſtrict, next adjoining, in manner aforeſaid, and a certificate from the Clerk of the ſame town or diſtrict, of ſuch publiſhment, and of the entry of their intentions of marriage as aforeſaid, ſhall be produced as aforeſaid, previous to their marriage. *Provided,* That in regard to any plantation in the counties of *Cumberland* and *Lincoln*, where the parties, not under the reſpective ages aforeſaid, ſhall have been

Intentions of marriage how to be publiſhed, and town clerks duty.

Inhabitants of the counties of *Cumberland* and *Lincoln*, reſpecting their marrying.

inhabitants for the ſpace of twelve months, and ſhall live twenty miles diſtant from ſuch next adjoining town or diſtrict, any Juſtice or ordained Miniſter belonging to this Commonwealth, may join them in marriage without ſuch certificate.

Bans forbidden, proceſs in that caſe.

IV. *And be it further enacted by the authority aforeſaid,* That if at any time the bans of matrimony betwixt any perſons ſhall be forbidden, and the reaſons thereof aſſigned in writing, by the perſon ſo forbiding the ſame, left with the town or diſtrict Clerk, he ſhall forbear iſſuing a certificate as aforeſaid, until the matter ſhall have been duly inquired into, and determined before two Juſtices of the ſame county, *quorum unus*; *provided* the perſon forbidding the bans, ſhall, within ſeven days after filing the reaſons as aforeſaid, apply unto two Juſtices as aforeſaid, and procure their determination thereon; unleſs the ſaid Juſtices ſhall certify unto the ſaid Clerk, that a further time is neceſſary for their determination on the reaſons filed; in which caſe the Clerk ſhall forbear iſſuing a certificate, until the time then certified to be neceſſary, ſhall expire, unleſs the Juſtices ſhall ſooner determine; according to whoſe determination, the Clerk ſhall govern himſelf herein; and if the ſaid Juſtices ſhall determine, that the reaſons aſſigned by the perſon forbidding the ſaid bans, were not ſupported by the laws of the Commonwealth, then the perſon ſo forbidding, ſhall pay all the coſt that may have ariſen in conſequence of ſuch objection; and the ſaid Juſtices ſhall make up judgment and iſſue execution accordingly.

Proviſo.

Penalty for deſtroying publiſhments.

V. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall deface or pull down any publiſhment poſted up in writing as aforeſaid, before the expiration of the ſaid fourteen days, he ſhall forfeit and pay the ſum of *twenty ſhillings*, to the uſe of the town; and if unable to pay the ſaid fine, may be ſet in the ſtocks for the ſpace of one hour. And if any Juſtice of the Peace, or Miniſter, ſhall otherwiſe than is expreſsly allowed and authorized by this act, join any perſons in marriage, they ſhall ſeverally forfeit and pay the ſum of *fifty pounds*, two third parts thereof to and for the uſe of the county, wherein the offence may be committed, and the reſidue to the proſecutor, to be ſued for and recovered in the Court of Common Pleas, within the ſame county, by the Treaſurer thereof, who is hereby injoined upon due information thereof, to proſecute and ſue for the ſaid penalty, without delay, or by the parent, guardian or other perſon under whoſe immediate care and government, either of the parties were at the time of ſuch marriage; and every Juſtice or Miniſter, againſt whom ſuch recovery ſhall be had, is hereby forbidden from joining perſons in marriage forever after. And in caſe a perſon forbid as aforeſaid, or any other perſon whatever, not authorized and empowered to ſolemnize marriages by this act, ſhall join any perſons in marriage, and be convicted thereof in the Supreme Judicial Court, upon preſentment or indictment, he ſhall ſtand one hour in the pillory, and be ſubjected to pay a fine, at the diſcretion of the Court, to the uſe of the Commonwealth, not exceeding *one hundred pounds*, nor leſs than *eighty pounds*.

Penalty for marrying contrary to this act,

Record to be kept of marriages.

VI. *And be it further enacted,* That every Juſtice and Miniſter, ſhall make and keep a particular record of all marriages ſolemnized before

before them reſpectively; and in the month of *April*, yearly and every year, ſhall make a return to the Clerk of the town, diſtrict or plantation in which he lives, certifying the names (both chriſtian names and ſir names) of all the perſons who have been by them reſpectively joined together in marriage, within the year then laſt paſt, if any ſuch have been by them ſo joined together. And if it ſhall ſo happen, that any one or more of the ſaid Juſtices, or Miniſters, ſhall not have joined together in marriage, any perſons during the courſe of the year then laſt paſt, it ſhall be the duty of ſuch Juſtice or Miniſter, alſo to certify to the ſaid town-clerk, in writing under his hand, that he has not joined any perſons in marriage, within the courſe of the ſaid year: And if any Juſtice or Miniſter, ſhall neglect to make ſuch return, within the month of *April*, annually, the Clerk of the town, diſtrict or plantation, where ſuch delinquent Juſtice or Miniſter lives, ſhall without delay, certify ſuch neglect to the Clerk of the Court of General Seſſions of the Peace, of the ſame county, who ſhall lay the ſame before the ſaid Court, at their next ſeſſion; and the perſon ſo neglecting ſhall be cited to appear before the ſaid Court, to anſwer for ſuch neglect; and if no ſufficient reaſon ſhall be aſſigned therefor, he ſhall be conſidered and adjudged diſqualified for joining perſons in marriage for a term of time, not exceeding ten years, at the diſcretion of the Juſtices of the ſaid Court. And every town and diſtrict Clerk, ſhall duly and ſeaſonably record all marriages, ſo certified to him, as aforeſaid, and ſhall alſo return a liſt or copy thereof to the Clerk of the Court of General Seſſions of the Peace of the ſame county, ſometime in the month of *May*, yearly and every year, to be there recorded, upon penalty of forfeiting *twenty ſhillings* for each neglect: And it ſhall be the duty of each Clerk of the Seſſions, to proſecute for every ſuch neglect, in the county to which he belongs. And every Clerk of the Seſſions ſhall record all ſuch returns of marriages at large, in a book to be kept for that purpoſe, and no other, under the ſame penalty for each neglect.

Return of marriages, to be made annually.

Penalty for neglecting to make ſuch return.

Town & diſtrict Clerks, to record all marriages.

VII. *And be it further enacted*, That no perſon by this act authorized to marry, ſhall join in marriage any white perſon with any Negro, Indian or Mulatto, on penalty of the ſum of *fifty pounds*, two third parts thereof to the uſe of the county wherein ſuch offence ſhall be committed, and the reſidue to the proſecutor, to be recovered by the Treaſurer of the ſame county, in manner as aforeſaid; and all ſuch marriages ſhall be abſolutely null and void.

Penalty for joining in marriage, any white perſon with any Negro, Indian or Mulatto.

VIII. *And be it further enacted by the authority aforeſaid*, That any marriages which have been, or hereafter may be had and ſolemnized, among the people called Quakers, or Friends, in the manner and form, uſed and practiced in their ſocieties, ſhall be good and valid in law, any thing in this act to the contrary notwithſtanding: And the Clerk, or keeper of the records of the meeting wherein ſuch marriage ſhall be had and ſolemnized, ſhall once a year make a certificate, under his hand, of all marriages had and ſolemnized in the ſociety, or meeting, to which he belongs, and ſhall deliver the ſame to the Clerk of the Court of General Seſſions of the Peace, of the county wherein the marriages have been had and

Marriages ſolemnized among Quakers, declared valid.

Certificate of all ſuch marriages, to be made annually.

Fines how appropriated.

and solemnized, under the penalty of *twenty shillings*, for each neglect. All fines, not particularly appropriated, shall be to the use of the prosecutor. And all former laws relating to the solemnization of marriages, are hereby repealed.

This act to be in force from and after the last day of *December*, one thousand seven hundred and eighty-six, and not sooner.

[This act passed *June* 22, 1786.]

An Act for the due Regulation of licenced Houses.

Persons presuming to be innholders, retailers, &c. without being licenced.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That no person whatsoever, may presume to be a common victualler, innholder, taverner, or seller of wine, beer, ale, cyder, brandy, rum, or any strong liquors, by retail, or in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, except such person be first duly licenced, according to law, by the Justices of the Peace of the same county, where such person lives, in General Sessions assembled, according to the regulations hereafter

Penalty.

expressed; on pain of forfeiting the sum of *twenty pounds*; and if any person shall at any time sell any spirituous liquors, or any mixed liquors, part of which is spirituous, without licence therefor duly had and obtained, according to law, he shall forfeit and pay for each offence, a sum not exceeding *six pounds*, nor less than *forty shillings*, which fine or forfeiture, as also the fine or forfeiture aforementioned, shall enure, one half thereof to the informer, the other half to the county where such offence is committed.

II. *And be it further enacted by the authority aforesaid*, That all licences shall be yearly renewed; and that the Clerk of the Peace, in the respective counties, from time to time, annually, before the granting licences, shall transmit to the selectmen of every town and district, within the county, a list of the names of the persons in such town or district, that were licenced the year before; and that licences shall not be renewed to any person borne on such list, unless the selectmen of such town or district, shall have considered the same and made return thereof to the Clerk of the Peace of the county to which they respectively belong, certifying thereon as follows, *viz.*

Licences shall be renewed, yearly,

Selectmen to return a list to the Clerk of the Peace, with a certificate.

Form.

WE the subscribers, selectmen of the town (or district) of do hereby certify, that we have maturely considered the returned list of such persons as were licenced the year past, and to the best of our knowledge, the following persons named therein, have maintained good rule and order in their respective houses or shops, and have conformed to the laws and regulations respecting licenced persons, and are firmly attached to the constitution and laws of this Commonwealth.

And no person shall have his licence renewed, unless his name be inserted in such certificate, or in another of the same tenor.

And

And no perſon, after the firſt day of *June*, one thouſand ſeven hundred and eighty-ſeven, ſhall be licenced to be a victualler, innholder, taverner or retailer of ſpirituous liquors, until he has taken an oath in the following words. Perſons licenced ſhall be ſworn.

I *A. B.* do ſwear, that I will bear true faith and allegiance to the Commonwealth of *Maſſachuſetts*, and that I will, to the utmoſt of my power, defend the Conſtitution and government thereof, againſt traiterous conſpiracies and all hoſtile and violent attempts whatſoever. Form of the oath.

Which oath may be adminiſtered by the Clerk of the Court of General Seſſions of the Peace, or by any Juſtice of the Peace, or any town or diſtrict Clerk, in ſuch towns or diſtricts wherein no Juſtice of the Peace dwells. And the Juſtice or Clerk who may adminiſter ſuch oath, ſhall make certificate thereof, to the Court of General Seſſions of the Peace; which certificate ſhall be filed by the Clerk of the ſaid Court, among the records of the ſame Court; and a certificate that ſuch oath has been taken, ſhall be made and filed as aforeſaid, in caſes where the Clerk of the ſaid Court ſhall adminiſter ſuch oath; and no certificate as aforeſaid, ſhall be required, afterwards, upon a renewal of ſuch perſon's licence. And no perſon ſhall be firſtly or originally licenced, to be a victualler, innholder, taverner, or ſeller of wine, beer, ale, cyder, brandy, rum or other ſtrong liquors, by retail, in the town or diſtrict where he lives, other than ſuch as produce a certificate, from the ſelectmen of the ſame town or diſtrict, recommending them as follows, *viz.* By whom adminiſtered, &c. No perſon ſhall be originally licenced, unleſs a certificate is produced from the Selectmen of the town.

WE the ſubſcribers, ſelectmen of the town (or diſtrict) of do approve of (inſerting the name of the perſon and the employment for which he or ſhe is approbated) in the ſaid town (or diſtrict) for the year enſuing; and we do hereby recommend the ſaid , as a perſon of ſober life and converſation, ſuitably qualified and provided for the exerciſe of ſuch an employment, and firmly attached to the Conſtitution and laws of this Commonwealth. Form.

And it ſhall be the duty of the ſelectmen in the ſeveral towns, annually, to certify to the Court of the General Seſſions of the Peace, at the beginning of their term for granting licences, what number of innholders and retailers, in their reſpective towns, they judge to be neceſſary for the publick good. And that no licence be renewed, to any perſon who ſhall have been before licenced, againſt whom any preſentment, complaint, or information ſhall be made for miſrule or diſorder in ſuch houſe, or for not being ſuitably provided as the law in ſuch caſe requires, to entertain ſtrangers and travellers at bed and board, before the matter complained of and informed againſt, be enquired into and judged of. *Provided* ſuch preſentment or complaint be proſecuted to effect, at or before the ſame Court for granting ſuch licences; unleſs the proſecution be delayed at the motion of the perſon applying for the licence. Duty of Selectmen. No licence ſhall be renewed to perſons who ſtand preſented. Proviſo.

III. *Be it further enacted by the authority aforeſaid*, That all innholders, taverners and common victuallers, ſhall at all times be furniſhed with ſuitable proviſions and lodging, for the refreſhment

Innholders & taverners, ſhall at all times be furniſhed with ſuitable proviſions, &c. on pain of being deprived of their licence.

and entertainment of ſtrangers and travellers, paſturing and ſtable room, hay and provender (ſaving that in populous ſea-port towns, ſtable room, hay and provender only are required) for their horſes and cattle, on pain of being deprived of their licence. And every licenced victualler, innholder or taverner, ſhall at all times have a board or ſign affixed to his or her houſe, or in ſome conſpicuous place near the ſame, with his or name at large thereon, and the particular employment for which he or ſhe is licenced: And if any victualler, innholder or taverner, enjoined by law to be ſuitably provided to receive and entertain ſtrangers, travellers or others, as occaſion may require, ſhall be convicted of refuſing to make ſuitable proviſion when deſired, for the receiving of ſtrangers, travellers and their horſes and cattle, or for any publick entertainment, ſuch perſon, upon being convicted thereof before the Juſtices of the General Seſſions of the Peace, of the county to which ſuch perſon belongs, ſhall by the ſaid Juſtices be deprived of his or her licence; and the ſaid Juſtices ſhall be, and they are hereby empowered and directed, to order the ſheriff of the ſame county, or his deputy-ſheriff, to cauſe the ſign of ſuch convicted perſon, to be taken down.

Penalty if any perſon, except taverners or innholders, ſhall preſume to ſell any ſtrong or mixed liquors.

IV. *And be it further enacted by the authority aforeſaid*, That no perſon except thoſe who are licenced for common victuallers, taverners, or innholders, may preſume to ſell any ſtrong liquors, as in this act mentioned, nor any mixed liquors part of which are ſpirituous, to be drank in their houſes, or any of the parts or dependencies of the ſame; and that if any perſon licenced to ſell wine, beer, ale, cyder, brandy, rum or any ſtrong liquors by retail only, ſhall be convicted of entertaining or ſuffering any perſon or perſons to drink ſuch ſtrong liquors or mixed liquors in their ſhops, houſes or parts or dependencies of ſuch ſhops or houſes, he ſhall incur and ſuffer the like penalties and forfeitures as are inflicted by this law, upon perſons ſelling without licence, to be recovered and appropriated in the ſame manner.

Penalty for keeping implements for gaming.

V. *And be it enacted by the authority aforeſaid*, That no tavern-er, innholder or victualler, ſhall have or keep in or about their houſes, yards, gardens or dependencies, any dice, cards, bowls, billiards, quoits or any other implements uſed in gaming; nor ſhall ſuffer any perſon or perſons reſorting unto any of their houſes, to uſe or exerciſe any of the ſaid games, or any other unlawful game or ſport, within their ſaid houſes, or any of the dependencies as aforeſaid, or places to them belonging, on pain of forfeiting the ſum of *forty ſhillings*, for every ſuch offence, upon due conviction thereof, to be diſpoſed of as is herein directed; and every perſon convicted of playing as aforeſaid, in any ſuch houſe or dependencies thereof, ſhall forfeit the ſum of *twenty ſhillings*, to be diſpoſed of as aforeſaid.

Penalty for ſuffering dancing or revelling.

VI. *And be it further enacted by the authority aforeſaid*, That no taverner, innkeeper or victualler, ſhall ſuffer any dancing, or revelling in his houſe, or the dependencies thereof, as aforeſaid, on penalty of *thirty ſhillings*, to be paid by the maſter or keeper of the ſaid houſe, who ſhall ſuffer the ſame, and the penalty of *ſix ſhillings*

to

to be paid by each perſon offending, in any of the ſaid particulars, to be diſpoſed of as aforeſaid.

VII. *And be it further enacted by the authority aforeſaid,* That no taverner, innholder or victualler, ſhall ſuffer any perſon to drink to drunkenneſs or exceſs in his or her houſe, or ſuffer any minor, (travellers excepted) or ſervant, to ſit drinking there, or to have any ſtrong drink there, without ſpecial allowance of their reſpective parents, guardians or maſters, on pain of forfeiting the fine of *twenty ſhillings*, for every offence of that kind, to be appropriated as aforeſaid.

Forfeiture for ſuffering perſons to drink to exceſs.

VIII. *And be it further enacted by the authority aforeſaid,* That if any perſon after being duly convicted of any breach of this law, ſhall again break any part of this law, and thereof be duly convicted, he ſhall, over and above ſuffering the penalty ſet to ſuch breach of this law, recognize for his good behaviour in the ſum of *twenty pounds*, for one year, with two ſufficient ſureties, over and above his recognizance for good order, at taking out his licence. And if any perſon convicted of a ſecond breach of this law, as foreſaid, ſhall preſume again to break any part of this law, over and above ſuffering the penalty of this law for ſuch breach of it, he or ſhe ſhall forfeit his or her licence, not to be renewed again for the ſpace of three years, next following.

Penalty for a ſecond breach of this act.

IX. *And be it further enacted by the authority aforeſaid,* That if any perſon being duly convicted of any breach of this law, ſhall be unable or ſhall neglect to pay and ſatisfy the fine impoſed, together with the coſts of proſecution, and likewiſe give bond for his good behaviour, if it be on the ſecond conviction, within twenty-four hours next after ſentence declared in that reſpect, it ſhall and may be lawful for the Court, before whom ſuch conviction may be, to order ſuch offender to be openly whipt not exceeding fifteen ſtripes, for one offence, nor leſs than ten, and to reſtrain the offender in priſon until the ſaid fine and charges are paid and bond given as aforeſaid, or the order for corporal puniſhment be executed.

Puniſhment, if perſons convicted of a breach of this act, ſhall be unable, or ſhall neglect to pay the fine impoſed.

X. *And be it further enacted by the authority aforeſaid,* That before any perſon ſhall receive a licence to be an innholder, taverner, victualler or retailer of ſpirituous liquors, every ſuch perſon ſhall become bound by recognizance to the Commonwealth, in the ſum of *twenty pounds*, as principal, with two ſureties in *ten pounds* each, before one or more Juſtices of the General Seſſions of the Peace, on condition following, *viz.*

Perſons licenced, ſhall become bound to the Commonwealth.

The condition of this recognizance is ſuch, That whereas the above-bounden *A. B.* is admitted and allowed by the Juſtices of the General Seſſions of the Peace, to keep a tavern, inn, or victualling-houſe, and to ſell wine, beer, ale, cyder, brandy, rum, and mixed liquors and other ſtrong liquors by retail, for the ſpace of one whole year next enſuing, and no longer, in the now dwelling-houſe of the ſaid *A. B.* and no other; if therefore, the ſaid *A. B.* during the time aforeſaid, ſhall keep and maintain good order and rule, and ſhall ſuffer no diſorders, nor unlawful games to be uſed in his ſaid houſe, or in any of the dependencies thereof, and ſhall not break any of the laws for the regulation of ſuch houſes, then this recognizance to be void; otherwiſe, to remain in full force and virtue. And

Form of the recognizance.

Perſons licenced to be retailers of ſtrong liquors, ſhall become bound by recognizance.

And before any perſon ſhall receive licence to be a retailer of ſtrong liquors, to be ſpent out of his houſe, and not otherwiſe, ſuch perſon ſhall become bound by recognizance, as aforeſaid, on condition following, *viz.*

Form.

The condition of this recognizance is ſuch, That whereas the above-bounden *A. B.* is licenced and allowed by the Juſtices of the Court of General Seſſions of the Peace, to retail ſtrong liquors, to be ſpent out of his now dwelling-houſe, or ſhop, for the ſpace of one year next enſuing, and no longer, and not otherwiſe; if therefore, the ſaid *A. B.* ſhall not break the laws, made for the regulation of ſuch retailers, and ſhall do and obſerve the directions of the law, relating to ſuch licences, then this preſent recognizance to be void, otherwiſe, to remain in full force and virtue.

Upon default, a *ſcire facias* ſhall iſſue.

XI. *And be it further enacted by the authority aforeſaid,* That upon default being made, upon any ſuch recognizance, a *ſcire facias,* ſhall iſſue, and judgment and execution be had in the uſual form. And that no recognizance for the keeping the laws reſpecting the above-mentioned licences, ſhall be put in ſuit, for any breach thereof made, after the expiration of two years from the time of taking ſuch recognizance.

Perſons licenced, ſhall become bound alſo to the Commonwealth, to pay exciſe duties, &c.

XII. *And be it further enacted,* That every perſon to whom any licence ſhall be granted, before the receiving or exerciſing the ſame, over and above the recognizance required, for the due obſervation of the laws, and keeping good rule and order as aforeſaid, ſhall alſo become bound to the Commonwealth, in a diſtinct recognizance, with ſufficient ſureties, in manner as aforeſaid, on condition, that the perſon ſo licenced ſhall duly and truly pay the duties of exciſe, according to the regulations that are, or during the time of ſuch perſon's licence, may be eſtabliſhed by law.

Time for granting licences.

XIII. *And be it further enacted by the authority aforeſaid,* That the time of granting licences to innholders and retailers as aforeſaid, ſhall be at the firſt General Seſſions of the Peace, that ſhall be held in courſe, within the ſeveral counties, on or next after the laſt Tueſday of *June,* annually; unleſs upon application made to the General Seſſions of the Peace, at any of the terms ſtated by law for holding ſaid Court, and on ſuch day and time of the ſitting of ſuch Court, as the Juſtices of the ſame are wont to give their more general attendance, for licence to keep an inn, tavern, a houſe of publick entertainment, or to retail ſtrong liquors, it ſhall appear to the ſame Court, that the perſon applying was unavoidably prevented from making application at the ſaid firſt General Seſſions of the Peace, or that the neceſſity of ſuch licence had taken place ſince that time; and in either caſe, that the publick good makes it neceſſary that the ſame ſhould be granted; in which caſe the ſaid Juſtices are empowered to grant the ſame, as though it was at the proper term for granting licences, the perſon applying for ſuch licence paying therefor, for the uſe of the county, *ſix ſhillings,* over and above the uſual fees and duties.

XIV. *And be it further enacted,* That when it ſhall ſo happen, that any licenced innholder or retailer, ſhall die before the year is

expired

expired for which licence ſhall have been granted, and the widow of the deceaſed, if ſuch there be, or children or other repreſentative, ſhall deſire to exerciſe ſuch employment, in ſuch licenced houſe, the remainder of the year; and where any licenced innholder or retailer, ſhall remove from a licenced houſe, and the purchaſer or occupier of ſuch houſe, ſhall petition to be licenced, to be an innholder or retailer in the ſame houſe for the remainder of the year, in every ſuch caſe, it ſhall be lawful, and the Juſtices of the Court of General Seſſions of the Peace, are hereby empowered, at any of the terms appointed by law for holding the ſame in ſuch county, and any two Juſtices of the Peace, *quorum unus*, are alſo empowered to grant licences to ſuch perſon or petitioner applying therefor, the remainder of the year. *Provided* ſuch perſon be ſuitably qualified therefor, and recommended in manner as the laws directs.

If any licenced innholder or retailer ſhall die, or remove from a licenced houſe before the year is expired, Juſtices of the Court of Seſſions empowered, &c.

And the better to prevent intemperance, and nurſeries of vice and debauchery:

XV. *Be it further enacted*, That the Juſtices of the General Seſſions of the Peace, in each county, be, and they are hereby directed, not to licence more perſons in any town or diſtrict to keep houſes for common entertainment, or to retail ſpirituous liquors as aforeſaid, than the Juſtices ſhall judge neceſſary for the receiving and refreſhment of travellers and ſtrangers, and to ſerve the publick occaſions of ſuch town or diſtrict, or are neceſſary for the publick good: And all publick houſes ſhall be on or near the high ſtreets, roads and places of great reſort.

Juſtices directed not to licence more perſons than are neceſſary for the publick good.

XVI. *And be it further enacted by the authority aforeſaid*, That the ſelectmen in each town ſhall cauſe to be poſted up in the houſes and ſhops of all taverners, innholders and retailers, as aforeſaid, within ſuch towns or diſtricts, a liſt of the names of all perſons reputed common drunkards, or common tiplers, or common gameſters, miſpending their time and eſtate in ſuch houſes. And every keeper of ſuch houſe or ſhop, after notice given him, as aforeſaid, that ſhall be convicted before one or more Juſtices of the Peace of entertaining or ſuffering any of the perſons in ſuch liſt, to drink or tipple, or game, in his or her houſe, or any of the dependencies thereof, or of ſelling them ſpirituous liquor, as aforeſaid, ſhall forfeit and pay the ſum of *thirty ſhillings*.

Selectmen ſhall cauſe the names of common drunkards, &c. to be poſted up in the houſes of taverners, & other licenced houſes.

XVII. *And be it further enacted by the authority aforeſaid*, That whenever any perſon ſhall by idleneſs or exceſſive drinking of ſpirituous liquors, ſo miſpend, waſte, or leſſen his or her eſtate, as thereby, either to expoſe himſelf or herſelf, his or her family to want or indigent circumſtances, or the town to which he or ſhe belongs, to a charge or expence for the maintenance or ſupport of him or her, or his or her family, or ſhall ſo indulge himſelf or herſelf in the uſe of ſpirituous liquors, as thereby greatly to injure his or her health, or endanger the loſs thereof, ſuch Selectmen ſhall in writing under their hands, forbid all licenced perſons in their reſpective towns and diſtricts, to ſell to any of the afore-deſcribed miſpenders of time and eſtate, any ſpirituous or ſtrong liquors, in this act mentioned, for the ſpace of one year, and ſhall in like manner forbid the licenced perſons of any town or diſtrict to which ſuch

Selectmen ſhall forbid licenced perſons to ſell ſpirituous liquors to exceſſive drinkers, idlers and miſpenders of time.

miſpender may reſort for the ſame; and if any of the perſons contained in the ſaid prohibition, ſhall not, in the opinion of the ſaid ſelectmen, or the major part of them, have reformed during the ſaid year; in ſuch caſe, the ſelectmen of ſuch town or diſtrict ſhall renew the prohibition in manner as aforeſaid; and if any licenced victualler, taverner, innholder, or retailer of ſpirituous or ſtrong liquors, ſhall during any ſuch prohibition, ſell to any perſon contained therein, any ſpirituous liquors, in this act mentioned, he ſhall forfeit and pay for each offence, the ſum of *twenty ſhillings*, to the uſe of the town or diſtrict where ſuch miſpender lives, to be ſued for, and recovered by the Treaſurer of ſuch town or diſtrict.

Penaly for ſelling to ſuch perſons.

And whereas the giving credit to town inhabitants and others, living near houſes of public entertainment, very much tends to the deſtructive expence of time and money of many perſons:

XVIII. *Be it therefore enacted*, That if any innholder, retailer, alehouſe-keeper, or common victualler, truſt or give credit to any perſon inhabiting in the ſame town, where they are truſted, or to any perſon whoſe place of abode is within five miles diſtance, for victuals, or drink, for more than *ten ſhillings*; ſuch innholder, retailer, ale-houſe-keeper, or common victualler, ſhall looſe all ſuch ſums ſo truſted, and all actions hereafter brought for ſuch debt or debts ſhall be utterly excluded and barred. And the defendant in ſuch action, may plead the matter ſpecially, or under the general iſſue give the matter in evidence, any law, uſage or cuſtom to the contrary notwithſtanding.

Inholders, &c. who ſhall truſt or give credit for more than 10s. ſhall loſe the ſums ſo truſted.

And for the better inſpecting of licenced houſes, and the diſcovery of ſuch perſons as ſhall preſume to ſell without licence:

XIX. *Be it enacted by the authority aforeſaid*, That the ſelectmen in each town or diſtrict, reſpectively, ſhall take due care that tythingmen be annually choſen, at the general meeting for the choice of town-officers, as is by law provided; and upon any vacancy, to fill up the number at any other town-meeting; which tythingmen ſhall have power and whoſe duty it ſhall be, carefully to inſpect all licenced houſes, and to inform of all diſorders or miſdemeanours which they ſhall diſcover or know to be committed in them, or any of them, to a Juſtice of the Peace, or to the General Seſſions, within the ſame county; as alſo of all ſuch as ſhall ſell ſpirituous liquors as aforeſaid, without licence: And in like manner to inform of all idle and diſorderly perſons, profane ſwearers or curſers, Sabbath-breakers, and the like offenders, to the intent, they may be puniſhed: Every of which tythingmen, ſhall be ſworn as other town-officers are, to the faithful diſcharge of his office, and ſhall be intitled to ſuch part of the penalties enjoined by this act, as by law accrues to the informer.

Tythingmen to be choſen annually.

Their duty.

XX. *And be it further enacted by the authority aforeſaid*, That all fines and penalties ariſing for any of the offences aforeſaid, not otherwiſe appropriated, ſhall be diſpoſed of, one half thereof to the uſe of the county where the offence is committed, and the other moiety to him or them who ſhall inform and proſecute for the ſame; except where the offence is proſecuted by a Grand-Jury, before the Supreme Judicial Court or Court of General Seſſions of the Peace; in which caſe the whole forfeiture to be to the uſe of the county.

Fines and penalties how diſpoſed of.

And

And every Juſtice of the Peace is hereby empowered to hear and determine any of the offences above-mentioned, committed within his county, where the penalty doth not exceed *four pounds*, and not otherwiſe: And every Juſtice of the Peace before whom ſuch conviction ſhall be had, and where the party convicted doth not appeal, ſhall make a certificate of the ſame; and the Juſtice before whom ſuch conviction is, ſhall cauſe the ſame to be fairly written, and ſhall return the ſame to the then next General Seſſions of the Peace for the county, where the ſaid offence is committed, there to be read over in open Court, and filed among the records of the ſame Court, to the end among other things, that it may be known, that the breakers of this law are duly proſecuted.

Juſtices of the Peace, empowered to hear and determine offences, where the penalty doth not exceed four pounds.

[This act paſſed *February* 28, 1787.]

An Act for repealing two Laws of this State, and for aſſerting the Right of this free and ſovereign Commonwealth, to expel ſuch Aliens as may be dangerous to the Peace and good Order of Government.

WHEREAS it is neceſſarily incident to every free, ſovereign and independent State, to hold the right of expelling from the dominions thereof, all aliens who profeſs diſpoſitions, or hold principles incompatible with the ſafety or ſovereignty of the State: And whereas all thoſe perſons who have ſince the fifth day of October, *in the year one thouſand ſeven hundred and ſeventy-four, and before the making the preſent form of Government of this Commonwealth, gone off to, and taken the protection of the government, or fleet, or army, of* Great-Britain, *are conſidered, and juſtly held to be aliens to this Commonwealth: And whereas thoſe of them who are named and mentioned in an act of this State, paſſed in the year one thouſand ſeven hundred and ſeventy-nine, entitled, "An act to confiſcate the eſtates of certain notorious conſpirators againſt the government and liberties of the inhabitants of the late Province, now State of* Maſſachuſetts-Bay;" *and all others of them who have borne arms in the late war, againſt this or either of the United States, or againſt the allies of the ſaid States, or have lent money to the government of* Great-Britain *to carry on the late war, are juſtly deemed to hold principles, and poſſeſs diſpoſitions, incompatible with the ſafety of the Commonwealth, and therefore ought to be excluded from this Commonwealth: And it being evident that an indiſcriminate admiſſion of the other deſcriptions of thoſe unhappy people, at this period, might be attended with diſagreeable and dangerous conſequences; but the laws made for their excluſion being not calculated to produce thoſe meaſures which are ſuitable to a ſtate of peace and tranquility:* Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That an act made and paſſed in the year one thouſand ſeven hundred and ſeventy-eight, entitled, "An act to prevent the return to this State Two acts repealed.

of

of certain perſons therein named, and others who have left this State, or either of the United States, and joined the enemies thereof;" and alſo another act paſſed in the year one thouſand ſeven hundred and eighty-three, intitled, "An act to carry into execution an act made in the year one thouſand ſeven hundred and ſeventy-eight, intitled, "An act to prevent the return to this State of certain perſons therein named, and others who have left this State, or either of the United States, and joined the enemies thereof," be, and they both are hereby repealed.

Perſons named in a certain act, or who have borne arms, &c. preſuming to return to this State,

II. *And be it enacted*, That if any of the perſons aforeſaid who have left this State, and gone off to, and taken the protection of the government, fleet, or army of *Great-Britain*, and are named in the act aforeſaid, entitled, "An act to confiſcate the eſtates of certain notorious conſpirators againſt the government and liberties of the inhabitants of the late Province, now State of *Maſſachuſetts-Bay*." or have borne arms, or been joined to the ſaid fleet, army, or to any volunteer corps of the king of *Great-Britain*, ſhall preſume to return to this State to reſide therein, it ſhall be the duty of every Juſtice of the Peace to give notice thereof to the Governour, and if ſuch perſon ſhall not immediately upon the Governour's giving order therefor, depart the State, it ſhall be the duty of every Juſtice of the Peace to whom complaint ſhall be made thereof, to apprehend ſuch perſon, and him commit to the common goal of the county where he may be, to be ſent off by the order of the Governor with advice of Council.

Duty of Juſtices in this caſe.

No abſentee to reſide in this State without a licence from the Governor.

III. *And be it enacted*, That no one of any other deſcription of the ſaid abſentees ſhall be allowed to reſide in this State, until ſuch perſon ſhall obtain a licence therefor from the Governor with advice of Council; and if any one of the ſaid perſons ſhall preſume to reſide within this State without ſuch licence, he ſhall be treated in the ſame manner as is provided by this act, reſpecting thoſe who have borne arms againſt theſe States. *Provided alſo*, That no licence ſo given by the Governor with advice of Council, ſhall have any force after the end of the next ſeſſion of the General Court after the ſame licence ſhall be granted; and that the perſon who ſhall obtain the ſame, unleſs an act of naturalization ſhall be paſſed in his favour, or the ſaid licence ſhall be approved at the ſaid ſeſſion of the General Court, ſhall be treated in the ſame manner as if the ſaid licence had not been obtained.

Proviſo.

Preamble.

And whereas by the ſixth article of the treaty, lately made between the United States and the King of *Great-Britain*, it is provided that no further confiſcations ſhall be made:

Lands held on the 19th April, 1775, which have not been confiſcated, &c. to be delivered up.

IV. *Be it therefore enacted by the authority aforeſaid*, That the lands and buildings which any of the perſons aforementioned held in fee ſimple, or by a leſſer eſtate, on the nineteenth day of *April*, one thouſand ſeven hundred and ſeventy-five, and which have not by the aforeſaid act, entitled, "An act to confiſcate the eſtates of certain notorious conſpirators againſt the government and liberties of the inhabitants of the late Province, now State of *Maſſachuſetts-Bay*," or by judgment had on due proceſs of law on ſuch eſtates, been confiſcated, nor have been pledged by government for money borrowed,

borrowed, or ſold by agents according to the laws of the State, for the payment of debts due from the abſentees, or have been made liable to pay an annual charge for the ſupport of any poor perſon, ſhall be delivered up to the perſons who reſpectively owned ſuch lands or buildings laſt before the nineteenth of *April*, 1775, or to any perſons claiming under them reſpectively, *Provided* ſuch claimers are not included in the act aforeſaid, made in the year one thouſand ſeven hundred and ſeventy-eight, who ſhall have the privilege of diſpoſing of the ſame, at any time within the ſpace of three years next coming; and any deed or other conveyance made thereof, to any citizen of this or either of the United States, ſhall be held good and valid in law, to convey the ſame, to all intents and purpoſes, as fully and amply as if ſuch grantor was a free citizen of this Commonwealth; any law of this Commonwealth to the contrary notwithſtanding.

Proviſo.

Deeds made thereof to be held valid in law.

[This act paſſed *March* 24, 1784.]

An Act in Addition to an Act, made and paſſed the preſent Year, entitled, "An Act for repealing two Laws of this State, and for aſſerting the Right of this free and ſovereign Commonwealth, to expel ſuch Aliens as may be dangerous to the Peace and good Order of Government."

WHEREAS in the laſt paragraph of the act aforeſaid, proviſion is made as follows: Provided, *ſuch claimers are not included in the act aforeſaid, made in the year one thouſand ſeven hundred and ſeventy-eight*:

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the proviſo above recited be, and hereby is repealed. And in lieu thereof,

Proviſo repeal'd.

II. *Be it enacted*, That provided ſuch claimers are not included in the act aforeſaid, entitled, "An act to confiſcate the eſtates of certain notorious conſpirators againſt the government and liberties of the inhabitants of the late province, now State of *Maſſachuſetts-Bay*."

And whereas by the act aforeſaid, made and paſſed in the preſent year, no proviſion is made reſpecting the real eſtates of ſuch abſentees as have been mortgaged or leaſed by order of government:

III. *Be it therefore enacted by the authority aforeſaid*, That all thoſe real eſtates, which on the nineteenth day of *April*, in the year one thouſand ſeven hundred and ſeventy-five, were the property of any perſon or perſons who are mentioned, intended or deſcribed, in an act paſſed in the year one thouſand ſeven hundred and ſeventy-nine, entitled, "An act for confiſcating the eſtates of certain perſons, commonly called abſentees;" and which eſtates have been mortgaged by

Real eſtates of abſentees, which have been mortgaged or leaſed by government, how conſidered.

by order of government, ſhall be conſidered as having been confiſcated, ſaving only the right of redemption in the legal claimers, or in the Commonwealth where no legal claimant ſhall appear, upon paying and diſcharging the mortgage, according to the true intent and ſpirit of the ſame, which ſuch claimants are authorized to do in the ſame manner as the Commonwealth might; and where ſuch eſtate hath been leaſed by order of government, the income and profit, uſe and improvement thereof, ſhall be conſidered as confiſcated for the term of which the ſame is leaſed; and the tenants ſhall hold the ſame accordingly, till the end of the term, when the claimants ſhall have the ſame; and that all doings and proceedings of agents, and committees, on any real eſtate of an abſentee, or a real Britiſh ſubject, which has not been confiſcated, done and had according to the laws and reſolutions of government, or which has been done by any other perſon under orders of any military commander, ſhall be good and valid to all intents and purpoſes.

Perſonal eſtate diſpoſed of by government, to be held as confiſcated.

IV. *And be it further enacted by the authority aforeſaid*, That all the perſonal eſtate of the perſons aforeſaid, who left this State, or any other of the United States, or any of the provinces or colonies of *America*, ſince the fifth day of *October*, in the year one thouſand ſeven hundred and ſeventy-four; and before the making of the preſent conſtitution or frame of government of this Commonwealth, and went off to, and took the protection of the government, fleet or army of *Great-Britain*, and which perſonal eſtate hath been taken, ſold, uſed or diſpoſed of, by order of government, ſhall be held, deemed and taken to have been confiſcated; and that no perſon or perſons of the deſcriptions aforeſaid, ſhall have or maintain any action againſt any committee, agent or any perſon whatſoever, who has diſpoſed of the ſame in conſequence of any law, reſolve or order of government, or of the Provincial Congreſs, formerly holden in this then province, or of any order or reſolve of the United States, or taken by the order of any military commander, to the uſe of this or the United States; and where any action ſhall be brought therefor, the party ſued may plead the general iſſue, and give this act in evidence.

[This act paſſed *November* 10, 1784.]

An Act empowering the Judges of Probate to appoint Guardians to Minors and others.

Guardians to be allowed by the Judge of Probate.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the Judge of Probate in each county reſpectively, when and ſo often as there ſhall be occaſion, be, and hereby is empowered, to allow of guardians that ſhall be choſen by minors of fourteen years of age, and to appoint guardians for ſuch as ſhall be within or under that age, taking ſufficient ſecurity of all ſuch guardians for the faithful diſcharge of their truſt, and to account either with the

Judge

Judge or minor, when ſuch minor ſhall arrive to the age of twenty-one years, or at ſuch other time as the Judge upon complaint to him made, ſhall direct. And when any minor above the age of fourteen years ſhall be cited by the Judge of Probate to chooſe a guardian, and ſuch minor ſhall refuſe or neglect to appear, or when appearing ſhall refuſe to chooſe a guardian, or any guardian choſen by ſuch minor ſhall be unable to give ſufficient ſecurity, or ſhall refuſe the truſt, or when any minor above the age of fourteen years ſhall be without this government, in every ſuch caſe the Judge of Probate ſhall have the ſame power to appoint a guardian as though ſuch minor were under the age of fourteen years.

Proviſo.

Provided nevertheleſs, That when a minor above the age of fourteen years, living more than ten miles diſtance from the Judge of Probate's dwelling-houſe, ſhall chooſe a guardian, ſuch minor may have that choice certified to the Judge by any Juſtice of the Peace in the ſame county, or by the town-clerk, if no Juſtice ſhall dwell in ſuch town, which choice ſo certified ſhall be deemed as good and valid as if done in the ſaid Judge's preſence.

Judges empowered, upon requeſt made by the friends of any ideot, &c. to direct the ſelectmen to make inquiſition.

II. *And be it further enacted*, That it ſhall be in the power of the Judges for the probate of wills, within their reſpective counties, from time to time (upon requeſt made by the friends or relations of any ideot, *non compos*, or lunatick perſon, or by the overſeers of the poor in ſuch town where ſuch ideot, *non compos*, or lunatick perſon lives or is an inhabitant) to direct the ſelectmen of ſuch town to make inquiſition thereinto; and if the perſon ſaid to be an ideot, lunatick, or diſtracted perſon, ſhall be adjudged by the ſelectmen of the town (or the major part of them) where ſuch perſon reſides, to be incapable to take care of him or herſelf, and they ſhall certify the ſame under their hands, to the Judge, the ſaid Judge of Probate ſhall be empowered to aſſign ſome ſuitable perſon or perſons to be guardian or guardians to ſuch ideot, lunatick, *non compos*, or diſtracted perſon, directing and empowering ſuch guardian or guardians to take care of the perſon and eſtate, both real and perſonal, of ſuch perſon, and to make a true and perfect inventory of the ſaid eſtate, to be returned into and filed in the probate office in ſuch county.

To be certified to the Judges.

Judges of Probate authorized upon complaint of any heirs, &c.

III. *And be it further enacted*, That the Judges of Probate in their reſpective counties, are alſo fully authoriſed and empowered, upon the complaint of any heir, creditor or other perſon, having lawful right or claims in expectancy, to the eſtate of any ideot, lunatick, *non compos*, or diſtracted perſon, as well as the guardian or guardians, to proceed with any perſon or perſons ſuſpected of concealing, embezzling or conveying away any of the money, goods or chattels of ſuch ideot, lunatick, *non compos*, or diſtracted perſon, in the ſame way and manner as is by law preſcribed for perſons ſuſpected of concealing, embezzling, or conveying away the money, goods or effects of deceaſed perſons.

Guardians to improve the eſtate of the ideot, &c. and to ſettle accounts.

IV. *And be it further enacted by the authority aforeſaid*, That the guardian or guardians appointed as aforeſaid, ſhall improve frugally and without waſte and deſtruction, the eſtate of the ideot, *non compos*, lunatick or diſtracted perſon, and apply the annual income

and

and profits thereof for the comfortable maintenance and ſupport of the ſaid ideot, lunatick, *non compos* or diſtracted perſon, and alſo of his or her houſhold or family, (if any ſuch there be) and the ſaid guardian or guardians are hereby empowered to ſettle accounts, receive, (and if need be) to ſue for and recover all juſt debts due to the ſaid ideot, lunatick, *non compos*, or diſtracted perſon, from any perſon or perſons whomſoever, and to manage, improve, or divide the real eſtate, in as full and ample a manner as the ſaid ideot, lunatick, *non compos*, or diſtracted perſon might or could were they reſtored to the full uſe of their rational faculties; and ſhall alſo be ſubject to the payment of all juſt debts owing by ſuch perſon which were contracted before their diſtraction, out of their perſonal eſtate, or in caſe that be inſufficient, then out of the real eſtate, being firſt empowered to make ſale thereof by the Supreme Judicial Court, in the way and manner executors or adminiſtrators are empowered to make ſale of the real eſtates of deceaſed perſons. And in caſe the income or improvement of the perſonal and real eſtate of ſuch perſons ſhall not be ſufficient to ſupport them, the ſaid Supreme Judicial Court may licence and authorize the guardians to make ſale of the whole or part of the real eſtate of ſuch perſon for that purpoſe, as occaſion may require. And in caſe any ſuch ideot, lunatick, or diſtracted perſon ſhall be reſtored to the uſe of his reaſon, the reſidue and remainder of the eſtate real and perſonal, ſhall be returned and delivered to him, or in caſe of his death to his heirs, executors, or adminiſtrators; the guardian or guardians having firſt ſuch a reaſonable allowance out of the ſame for their charge and trouble, as the Judge of Probate ſhall order.

In caſe.

V. *And be it further enacted*, That the guardian or guardians appointed as aforeſaid, ſhall give bond to the Judge of Probate for the time being in a reaſonable ſum, with ſufficient ſureties for the faithful diſcharge of the truſt repoſed in them, and more eſpecially for the rendering a juſt and true account of their guardianſhip, when and ſo often as they ſhall be thereunto required.

Guardians to give bond.

VI. *And be it further enacted*, That the Judges of Probate in their reſpective counties may alſo, as occaſion may require, appoint guardians for the children of lunaticks, ideots, *non compos*, or diſtracted perſons, in the ſame way and manner as though their parents were naturally dead.

Judges of Probate to appoint guardians for the children of lunaticks, &c.

And whereas, to the diſhonour of human nature and the great injury of ſociety, individuals oftentimes ſpend, leſſen and waſte their eſtates by exceſſive drinking, gaming, idleneſs and debauchery, and thereby involve themſelves and families in diſtreſs, miſery and ruin; and ſubject the towns to which they belong to expence and charge for their maintenance and ſupport:

VII. *Be it therefore enacted by the authority aforeſaid*, That when any perſon by exceſſive drinking, gaming, idleneſs or debauchery of any kind, ſhall ſo ſpend, waſte or leſſen his or her eſtate, as thereby to expoſe himſelf or herſelf, or his or her family, or any of them, to want or ſuffering circumſtances, or ſhall by thus ſpending, waſting, or leſſening his or her eſtate, endanger or expoſe the town to which he or ſhe belongs, in the judgment of the ſelectmen thereof,

Selectmen to make complaint to the Judge of Probate, in caſe perſons, by exceſſive drinking, &c. endanger the towns to which they belong to charge.

of, to a charge or expence for the maintenance or ſupport of him or her, or his or her family, or any of them, ſuch ſelectmen, or the major part of them, ſhall, in ſuch caſe, lodge a complaint with the Judge of Probate for the county to which the perſon ſpending, waſting or leſſening his eſtate as aforeſaid doth belong; and if it ſhall appear to the ſaid Judge of Probate, that the perſon complained of comes within the deſcription of this act, and has had due notice of the complaint exhibited againſt him or her, as the caſe may be, then, and in that caſe, the ſaid Judge of Probate ſhall appoint the ſaid ſelectmen, or a major part of them, or ſome ſuitable and diſcreet perſon or perſons, guardian or guardians to ſuch perſon. And no ſale or bargain of any real or perſonal eſtate, made by ſuch perſon or perſons, after the appointment of guardianſhip as aforeſaid, ſhall be held valid in law. And the guardian or guardians that may be thus appointed, ſhall, in diſcharging the duties of their appointment, purſue the ſame method, and be under ſimilar obligations for a faithful diſcharge of their truſt, as guardians appointed for ideots, lunaticks, or for perſons *non compos mentis*.

Executors, &c. not compelled to plead ſpecially.

VIII. *And be it further enacted*, That executors, adminiſtrators, and guardians ſhall not be compelled to plead ſpecially to any action or ſuit at law, brought againſt them in their ſaid capacity; but may under the general iſſue give any ſpecial matter in evidence.

Judges of Probate to fix certain days for making & publiſhing their orders and decrees.

IX. *And be it further enacted*, That the Judges of Probate in the reſpective counties of this State, ſhall have certain fixed days for the making and publiſhing their orders and decrees, and ſuch days to be made known by publick notifications thereof in the ſeveral counties. And no Judge of Probate ſhall be allowed or admitted to have a voice in judging and determining (nor ſhall he be admitted to plead or act as an attorney) in any civil action whatſoever, which may depend on or have relation to any ſentence or decree made or paſſed by him in his office aforeſaid.

[This act paſſed *March* 10, 1784.]

An Act regulating the Admiſſion of Attornies.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That no perſon ſhall be admitted an attorney of any Court in this Commonwealth, unleſs he is a perſon of good moral character, and well affected to the conſtitution and government of this Commonwealth, and hath had opportunity to qualify himſelf for the office, and hath made ſuch proficiency as will render him uſeful therein; and no perſon ſhall be admitted to practice as an attorney in any Court of Juſtice within this State, until he ſhall in open Court have taken and ſubſcribed the declaration preſcribed in the conſtitution of this Commonwealth, and an oath, in tenor following:

Perſons, before admiſſion as Attornies, to take an oath.

Form of the oath.

You solemnly swear, that you will do no falsehood, nor consent to the doing of any in Court, and if you know of an intention to commit any, you will give knowledge thereof to the Justices of the Court or some of them, that it may be prevented: you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an attorney within the Courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the Courts as your clients.

So help you GOD.

Parties may plead and manage their own causes personally

II. *And be it enacted*, That the parties may plead and manage their own causes personally, or by the assistance of such counsel as they shall see fit to engage; but the plantiff or plantiffs in any suit, shall not be allowed to manage their cause by more than two attornies, nor shall any defendant be allowed to employ a greater number.

[This act passed *November* 4, 1785.]

Perpetual



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART II.

Real and Perſonal Eſtate.

An Act preſcribing the Manner of deviſing Lands, Tenements, and Hereditaments.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That every perſon lawfully ſeized of any lands, tenements, or hereditaments, within this State, in his or her own right, in fee ſimple, or for the life or lives of any other perſon or perſons of the age of twenty-one years, and upwards, and of ſane mind, ſhall have power to give, diſpoſe of and deviſe the ſame, as well by laſt will and teſtament in writing, as otherways by any act executed in his or her life time, to and among his or her children, or others, as he or ſhe ſhall think fit.

Perſons ſeized of lands, &c. empowered to diſpoſe of and deviſe the ſame, as well by will as otherways.

II. *And be it further enacted by the authority aforeſaid,* That all deviſes and bequeſts of any lands or tenements, ſhall be in writing, and ſigned by the party ſo deviſing the ſame, or by ſome perſon in his preſence, and by his expreſs direction, and ſhall be atteſted and ſubſcribed in the preſence of the ſaid deviſor, by three or more credible witneſſes, or elſe ſhall be utterly void and of no effect. And moreover, no deviſe in writing, of lands, tenements, and hereditaments, or any clauſe thereof, ſhall be revocable, otherways than by ſome other will or codicil in writing, or other writing declaring the ſame,

All deviſes and bequeſts of lands &c. to be in writing, and ſigned by the party ſo deviſing the ſame, and atteſted.

No deviſe in writing of lands &c. to be revocable otherways than.

ſame, or by burning, cancelling, tearing or obliterating the ſame by the teſtator himſelf, or in his preſence, and by his direction and conſent; but all deviſes and bequeſts of lands and tenements, ſhall remain and continue in full force until the ſame be burnt, cancelled, torn or obliterated by the teſtator, or his direction, in manner aforeſaid, or unleſs the ſame be altered by ſome other will or codicil, or other writing of the deviſor, ſigned in the preſence of three or more witneſſes, declaring ſuch alteration.

No nuncupative will to be good, where the eſtate bequeathed ſhall exceed a certain value, that is not proved by witneſſes.

III. *And be it further enacted*, That no nuncupative will ſhall be good, where the eſtate thereby bequeathed ſhall exceed the value of *fifty pounds*, that is not proved by the oath of three witneſſes (at the leaſt) that were preſent at the making thereof, nor unleſs it be proved that the teſtator at the time of pronouncing the ſame, did bid the perſons preſent, or ſome of them, to bear witneſs that ſuch was his will, or to that effect, nor unleſs ſuch nuncupative will were made in the time of the laſt ſickneſs of the deceaſed, and in the houſe of his or her habitation or dwelling, or where he or ſhe had been reſident for the ſpace of ten days or more, next before the making of ſuch will; except where ſuch perſon was unexpectedly taken ſick, being from home, and died before he or ſhe returned to the place of his or her habitation.

Probate of nuncupative wills.

IV. *And be it further enacted*, That no letters teſtamentary, or probate of any nuncupative will, ſhall paſs the ſeal of any Court of Probate, till fourteen days (at the leaſt) after the deceaſe of the teſtator be fully expired, nor ſhall any nuncupative will be at any time approved and allowed, unleſs proceſs ſhall have firſt iſſued, to call in the widow and other perſon or perſons principally intereſted, if reſident within the government, to the end they may conteſt the ſame if they pleaſe.

No teſtimony to be received to prove ſuch will after 6 months, unleſs.

V. *And be it further enacted*, That after ſix months ſhall have paſſed after ſpeaking any pretended teſtamentary words, no teſtimony ſhall be received to prove the ſame as a nuncupative will, unleſs the ſaid words, or the ſubſtance thereof, were reduced to writing within ſix days after the ſame teſtamentary words were ſpoken.

No written will to be repealed, but by writing, except.

VI. *And be it further enacted*, That no will in writing, concerning any goods, chattels or perſonal eſtate, ſhall be repealed, nor ſhall any clauſe or bequeſt therein be altered or changed by any words or will, by word of mouth only, except the ſame be in the life time of the teſtator committed to writing and read to the teſtator, and allowed by him in the preſence of three credible witneſſes at the leaſt. *Provided always*, that notwithſtanding this act, any ſoldier being in actual military ſervice, or any mariner or ſeaman being at ſea, may diſpoſe of his moveables, wages and other perſonal eſtate, as he might have done before the making of this act.

Proviſo.

Poſthumous children to have a proportion.

VII. *And be it further enacted*, That when any child ſhall happen to be born after the death of the father, without having any proviſion made in his will, every ſuch poſthumous child ſhall have right and intereſt in the eſtate of his or her father, in like manner as if the father had died inteſtate, and the ſame ſhall be aſſigned to him or her accordingly, and in every ſuch caſe the Judge of Probate ſhall iſſue his warrant as in caſe of inteſtate eſtates, to aſſign

to

to ſuch poſthumous child a ſhare in his or her father's eſtate, equal to what he would have inherited if his or her father had died inteſtate, and the ſame ſhall be taken in proportion from the deviſees and legatees who own the eſtate by virtue of ſuch will.

Children not having legacies given in the will of their father, to have a proportion of the eſtate aſſigned.

VIII. *And be it further enacted*, That any child or children, or their legal repreſentatives in caſe of their death, not having a lagacy given him, her or them in the will of their father or mother, ſhall have a proportion of the eſtate of their parents aſſigned unto him, her or them, as though ſuch parent had died inteſtate—provided ſuch child, children or grandchildren, have not had an equal proportion of the deceaſed's eſtate beſtowed on him, her or them in the deceaſed's life-time. And when any child, grandchild or other relation having a deviſe of perſonal eſtate or real eſtate, and ſuch deviſee ſhall die before the teſtator, leaving lineal deſcendants, ſuch deſcendants ſhall take the eſtate, real or perſonal, in the ſame way and manner ſuch deviſee would have done in caſe he had ſurvived the teſtator, any law, uſage or cuſtom to the contrary notwithſtanding: Alſo the widow in all caſes may wave the proviſion made for her in the will of her deceaſed huſband, and claim her dower and have the ſame aſſigned her, in the ſame manner as though her huſband had died inteſtate, in which caſe ſhe ſhall receive no benefit from ſuch proviſion, unleſs it appears by the will plainly the teſtator's intention to be in addition to her dower. And as it may ſometimes happen that a will reſpecting lands, and perſonal eſtate, through inattention, or otherwiſe, may be atteſted and ſubſcribed by a leſs number of credible witneſſes, than this act directs, for deviſing lands, tenements and hereditaments, which if approved and allowed as a teſtament of perſonal eſtate only, might defeat the original intention of the deviſor reſpecting the ſettlement of his eſtate.

Proviſo.

Wills in writing offered for probate not atteſted and ſubſcribed, not to be approved and allowed.

IX *Be it therefore further enacted by the authority aforeſaid*, That any will in writing hereafter offered for probate, which purports a diſpoſition of both real and perſonal eſtate, that ſhall not be atteſted and ſubſcribed as this act directs, for the deviſing of lands, tenements, and hereditaments, ſhall not be approved and allowed as a teſtament of perſonal eſtate only.

All eſtates real or perſonal not deviſed or bequeathed, how diſtributed.

X. *And be it further enacted*, That all ſuch eſtate, real or perſonal, that is not deviſed or bequeathed in the laſt will and teſtament of any perſon, hereafter to be proved, ſhall be diſtributed in the ſame manner as if it were an inteſtate eſtate, and the executor or executors ſhall adminiſter on the ſame as ſuch. And whereas doubts may ariſe who are to be deemed and taken as legal and credible witneſſes to wills:

Perſons atteſting the execution of wills, to whom, &c.

XI. *Be it further enacted by the authority aforeſaid*, That if any perſon hath atteſted or ſhall atteſt the execution of any will or codicil, to whom any beneficial deviſe, legacy, eſtate, intereſt, gift, or appointment of, or affecting any real or perſonal eſtate, other than and except charges on lands, tenements, or hereditaments, for the payment of any debt or debts, ſhall be thereby given or made, ſuch deviſe, legacy, eſtate, intereſt, gift, or appointment, ſhall, ſo far only as concerns ſuch perſon atteſting the execution of ſuch will or

codicil, or any perſon claiming under him, be utterly void, and ſuch perſon ſhall be admitted as a witneſs to the execution of ſuch will or codicil, ſuch deviſe, legacy, eſtate, intereſt, gift, or appointment, notwithſtanding.

In caſe.

XII. *And be it further enacted*, That in caſe, by any will or codicil already made or hereafter to be made, any lands, tenements, or hereditaments, are or ſhall be charged with any debt or debts, and any creditor whoſe debt is ſo charged hath atteſted or ſhall atteſt the execution of ſuch will or codicil, every ſuch creditor, notwithſtanding ſuch charge, ſhall be admitted as a witneſs to the execution of ſuch will or codicil.

Perſons atteſting the execution of wills, &c. to whom legacies or bequeſts are given, how they are to be admitted as witneſſes.

XIII. *And be it further enacted*, That if any perſon hath atteſted or ſhall atteſt the execution of any will or codicil, to whom any legacy or bequeſt is or ſhall be thereby given, and ſuch perſon, before he or ſhe ſhall give his or her teſtimony concerning the execution of any ſuch will or codicil, ſhall have been paid, or have accepted or releaſed, or ſhall refuſe to accept ſuch legacy or bequeſt, upon tender thereof, ſuch perſon ſhall be admitted as a witneſs to the execution of ſuch will or codicil, notwithſtanding ſuch legacy or bequeſt.

Proviſo.

Provided always, That the credit of ſuch witneſſes as aforeſaid, ſhall be ſubject to the conſideration of the Court or Jury before whom ſuch witneſs or witneſſes may be examined, or his or her teſtimony or atteſtation made uſe of in like manner to all intents and purpoſes, as the credit of other witneſſes in all other cauſes ought to be conſidered of and determined.

In caſe legatees as aforeſaid die in the life-time of the teſtator.

XIV. *And be it further enacted*, That in caſe any legatee as aforeſaid, who hath atteſted the execution of any will or codicil already made, or ſhall atteſt the execution of any will or codicil which ſhall hereafter be made, ſhall have died in the life-time of the teſtaſtor, or before he or ſhe ſhall have received or releaſed the legacy or bequeſt ſo given him or her as aforeſaid, and before he or ſhe ſhall have refuſed to receive ſuch legacy or bequeſt on tender made thereof, ſuch legatee ſhall be deemed a legal witneſs to the execution of ſuch will or codicil, within the intent of this act, notwithſtanding ſuch legacy or bequeſt.

No perſon to whom beneficial eſtates, &c. are given, which are hereby enacted to be null & void, or who have refuſed to receive any legacies, ſhall demand, &c.

XV. *And be it further enacted*, That no perſon to whom any beneficial eſtate, intereſt, gift, or appointment, ſhall be given or made, which is hereby enacted to be null and void as aforeſaid, or who ſhall have refuſed to receive any ſuch legacy or bequeſt on tender made as aforeſaid, and who ſhall have been examined as a witneſs concerning the execution of ſuch will or codicil, ſhall, after he or ſhe ſhall have been ſo examined, demand or receive any profit or benefit of or from any ſuch eſtate, intereſt, gift, or appointment, ſo given or made to him or her in and by any ſuch will or codicil, or demand, receive or accept from any perſon or perſons whatſoever, any ſuch legacy or bequeſt, or any ſatisfaction or compenſation for the ſame, in any manner whatever.

Executors to cauſe probate of wills to be made in thirty days next after the teſtator's death.

XVI. *And be it further enacted by the authority aforeſaid*, That if any executor or executors of the will of any perſon deceaſed, knowing of their being ſo named and appointed, ſhall not within *thirty days* next after the deceaſe of the teſtator, cauſe ſuch will to

be

be proved and recorded in the Regiſter of Probate's office, of the ſame county where the deceaſed perſon laſt dwelt, or preſent the ſaid will, and in writing declare his, her or their refuſal, every executor ſo neglecting his or her truſt and duty in that behalf (without juſt excuſe made and accepted by the Judge of Probate for ſuch delay) ſhall forfeit the ſum of *five pounds* a month, from and after the expiration of the ſaid thirty days, until he, ſhe or they ſhall cauſe probate of ſuch will to be made, or preſent the ſame as aforeſaid; every ſuch forfeiture to be had and recovered by action of debt in the Court of Common Pleas, in the ſame county, one moiety for him or them that ſhall ſue for the ſame, and the other moiety for the uſe of the legatees named in the ſame will; and upon any ſuch refuſal of the executor or executors, the Judge of Probate ſhall commit adminiſtration of the eſtate of the deceaſed, with the will annexed, unto the widow or next of kin to the deceaſed, or one or more of the deviſees, or in caſe of their refuſal, to one or more of the principal creditors, as he ſhall think fit. And if any perſon ſhall alienate or embezzle any of the goods or chattels of any deceaſed perſon, before he or ſhe have taken out letters of adminiſtration, and exhibited a true inventory of all the known eſtate of the perſon deceaſed, every ſuch perſon ſhall ſtand chargeable and be liable to the actions of the creditors and other perſons aggrieved, as being executors in their own wrong.

Penalty for neglect.

How recovered.

XVII. *And be it further enacted*, That every executor named in a will hereafter to be proved, and taking upon him that truſt by proving the ſame, ſhall give bond to the Judge of Probate, with ſufficient ſurety or ſureties, to return upon oath a true and perfect inventory of the teſtator's eſtate into the probate office, within three months, and to render an account of his proceedings thereon, in the ſame manner adminiſtrators are by law obliged to be bound, unleſs ſuch executor or executors are reſiduary legatees, in which caſe bonds may be given by him or them to pay the debts and legacies of the teſtator; and in caſe ſuch executor or executors ſhall neglect or refuſe, for the ſpace of twenty days, to give bond as aforeſaid, the Judge of Probate may commit adminiſtration of the eſtate of ſuch teſtator, with the will annexed, to ſome other perſon, in like manner as he may grant the ſame when the executor refuſes the truſt; and when the executor is under the age of twenty-one years at the time of proving the will, adminiſtration may be granted with the will annexed during the minority of ſuch executor. And where there are divers perſons named executors, in any will hereafter to be proved, none ſhall intermeddle and act as ſuch, but thoſe who actually give bond as aforeſaid. And any executor being a reſiduary legatee, may bring an action of account againſt his co-executor or executors of the eſtate of the teſtator in his or their hands, and may alſo ſue for and recover his equal and proportionable part thereof; and any other reſiduary legatee ſhall have like remedy againſt the executors. And any perſon having a legacy given in any laſt will, may ſue for and recover the ſame at the common law.

Executors to give bond, and to return an inventory into the probate office; unleſs.

In caſe of neglect.

Executor being reſiduary legatee, may ſue his executor.

XVIII. *And be it further enacted by the authority aforeſaid*, That when any teſtator in and by his laſt will and teſtament, hath given

or

or ſhall give any chattels or real eſtate to any perſon or perſons, and the ſame ſhall be taken in execution for the payment of the teſtator's debts, or ſhall be ſold therefor as the law provides, in ſuch caſe all the other legatees, deviſees, and heirs, ſhall refund their average or proportional part of ſuch loſs to ſuch perſon or perſons from whom the bequeſt ſhall be ſo taken away, and he or they ſhall and may maintain a ſuit or action at law to compel ſuch contribution.

Executors or adminiſtrators reſiding without the government refuſing to render their account,

XIX. *And be it further enacted by the authority aforeſaid,* That when any executor or executors of any laſt will and teſtament, or adminiſtrator of an inteſtate eſtate, ſhall reſide without the limits of this government, at the time of taking upon him that truſt, or ſhall afterwards remove out of this government, and ſhall neglect or refuſe after due notice from the Judge of Probate, to render his account and make a ſettlement of ſuch eſtate with the creditors, legatees, or heirs, or their legal repreſentatives, or when any executor or adminiſtrator ſhall become inſane, or otherwiſe incapable of, or evidently unſuitable to diſcharge the truſt repoſed in him, the Judges of Probate in their reſpective counties within this government, are authorized and empowered in ſuch caſes, to grant letters of adminiſtration with the will annexed (or otherways as the caſe may require) to ſuch perſon within this government, as to the ſaid Judge ſhall ſeem meet: and the adminiſtrator thus appointed, ſhall have the ſame power and authority to adminiſter the eſtate of the deceaſed, not adminiſtered upon by ſuch former executor or adminiſtrator, and be ſubjected to the ſame duties, in as full and ample a manner, as if the executor or adminiſtrator ſo removed or reſiding without this government as aforeſaid, were actually dead. And when a *feme ſole* ſhall jointly with one or more perſons, be appointed executrix or adminiſtratix, and after ſuch appointment ſhall, during the life of the other co-executor or co-adminiſtrator marry, ſuch marriage ſhall not make the baron an executor or adminiſtrator in her right; but ſhall operate as an extinguiſhment or determination of ſuch woman's power and authority: and the other executor or executors, adminiſtrator or adminiſtrators, may proceed in diſcharging the truſt repoſed in them, in the ſame way and manner as if ſuch woman were naturally dead. And the executor of an executor, ſhall not in conſequence thereof, become an executor of the firſt teſtator; but in every ſuch caſe, adminiſtration may be granted (if the circumſtances of the eſtate require it) upon the goods and eſtate of the firſt teſtator, unadminiſtered upon, with the will annexed, to ſuch perſon or perſons as the Judge of Probate may think fit, any law, uſage, or cuſtom to the contrary notwithſtanding.

Judges of Probate empowered in ſuch caſes.

All laws relating to deviſing lands, &c. repealed.

XX. *Be it further enacted,* That all the acts and laws of this Commonwealth now in force, ſo far as they relate to deviſing lands, tenements, hereditaments, and chattels, be, and they are hereby repealed, and made null and void. This act to be in force from and after the firſt of *June*, one thouſand ſeven hundred and eight-four.

[This act paſſed *February* 6, 1784.]

An Act directing the Deſcent of inteſtate Eſtates, and for empowering the Judge of Probate to make Partition in certain Caſes.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when any perſon ſhall die ſeized of lands, tenements or hereditaments, not by him deviſed, the ſame ſhall deſcend in equal ſhares to and among his children, and ſuch as ſhall legally repreſent them (if any of them be dead) except the eldeſt ſon then ſurviving, who ſhall have two ſhares, if there is no iſſue of an older ſon, in which caſe ſuch iſſue and lineal deſcendant, or deſcendants of ſuch iſſue, ſhall have two ſhares in right of the father, although the father died before the grandfather; and in every caſe where children ſhall inherit by repreſentation, it ſhall be in equal ſhares; and where there are no children of the inteſtate, the inheritance ſhall deſcend equally to the next of kin, in equal degree, and thoſe who repreſent them, computing by the rules of the civil law—no perſon to be conſidered as a legal repreſentative of collaterals beyond the degrees of brothers and ſiſters children; and for want of heirs the eſtate ſhall accrue to the Commonwealth. And when any of the children of an inteſtate die before his arrival to the age of twenty-one years, and unmarried, ſuch deceaſed child's ſhare ſhall deſcend equally among the ſurviving brothers and ſiſters, and ſuch as legally repreſent them; but if ſuch deceaſed child die after having arrived to the age of twenty-one years, unmarried and inteſtate, in the life time of the mother, every brother and ſiſter ſhall inherit equally with the mother.

Lands not deviſed, how it ſhall deſcend.

II. *And be it further enacted,* That when any perſon ſhall die poſſeſſed of any chattels or perſonal eſtate, not by him bequeathed, the ſame ſhall be diſtributed among his heirs, in the ſame way and manner real eſtates deſcend by this act.

Perſonal eſtate not bequeathed, how to be diſtributed.

III. *Provided nevertheleſs, and it is enacted,* That ſuch chattels or perſonal eſtate, ſhall ſtand chargeable with the payment of all the juſt debts and funeral charges of the deceaſed; and after the payment thereof, the ſurpluſage (if any there be) ſhall, by the Judge of Probate, be decreed, one third part to the widow of the deceaſed forever, unleſs the inteſtate die without iſſue, in which caſe ſhe ſhall have one half thereof forever. And when the perſonal eſtate ſhall be inſufficient to pay the debts and funeral charges of the deceaſed, the widow ſhall nevertheleſs be intitled to her apparel, and ſuch other of the perſonal eſtate as the Judge of Probate ſhall determine neceſſary, according to her quality and degree; and ſuch part of the perſonal eſtate as the Judge may allow the widow, ſhall not be aſſets in the hands of the executor or adminiſtrator. And the real eſtate ſhall ſtand chargeable with all the debts of the deceaſed, over and above what the perſonal ſhall be ſufficient to pay as aforeſaid.

Proviſo.

IV. *And be it further enacted,* That the widow of the deceaſed ſhall in all caſes be entitled to her dower in the real eſtate (where

Widows entitled to their dower.

ſhe ſhall not have been otherways endowed before marriage) and to a recovery of the ſame in manner as the law directs. And after the payment of debts, funeral expences, and the charges neceſſarily incurred in the ſettlement of any eſtate, are deducted, the Judge of Probate of the county where the deceaſed was an inhabitant or reſident, at the time of his death, ſhall cauſe the reſidue, whether it be ſituate in the county in which he is Judge, or any other county in the government, to be divided, and partition thereof to be made among the children or heirs as this act directs; unleſs it ſhall ſo happen, that ſome one or more of the children or grand-children, ſhall have portions of the inteſtate aſſigned or delivered them by him in his life-time; in which caſe ſuch portions ſhall be taken into conſideration, and deducted from their ſhares in ſuch partition reſpectively.

When a man & his wife ſhall be ſeized of lands, in her right, & ſhe die, how it ſhall be held.

V. *And be it further enacted,* That when a man and his wife ſhall be ſeized of lands, tenements, or hereditaments, in her right in fee, and iſſue ſhall be born alive of the body of ſuch wife, that may inherit the ſame, and ſuch wife ſhall die, the huſband ſhall have and hold ſuch eſtate during his natural life, as tenant by the courteſy. *Provided always,* That when the real eſtate cannot be divided among all the children, or their legal repreſentatives, without great prejudice to, or ſpoiling the whole, the Judge of Probate may order the whole to the eldeſt ſon, if he accept the ſame, or to any other of the ſons ſucceſſively, on his refuſal, he paying unto the other children of the deceaſed, their equal and proportionable ſhares of the true value thereof, upon an appraizement to be made by three diſintereſted freeholders, appointed by the Judge for that purpoſe, and under oath; or giving good ſecurity to pay the ſame, in ſuch convenient time as the ſaid Judge ſhall limit and appoint, making reaſonable allowance in the interim, not exceeding *ſix per cent.* per annum.

Proviſo.

When real eſtates of inteſtates will accommodate more than the eldeſt ſon, the Judge of Probate directed in this caſe.

VI. *And be it further enacted by the authority aforeſaid,* That when the real eſtate of an inteſtate will conveniently accommodate more of the children than the eldeſt ſon, or his legal repreſentatives, the Judge of Probate may ſettle the ſame on as many of the children (preference being always given to the ſons) as it will accommodate, without prejudice to, or ſpoiling the whole; or in caſe the inteſtate left no iſſue, the ſame may be aſſigned to one or ſo many of the next of kin to the inteſtate, in equal degree, or their legal repreſentatives, as ſuch eſtate will conveniently accommodate without prejudice to, or ſpoiling the whole, (preference being given to the male heirs among ſuch as are of kin, in equal degree.) And to the end there may be ſome method preſcribed for determining what ſhall be ſaid to be advancing a child by ſettlement, in the life-time of the inteſtate:

What ſhall be deemed an advancement to children of lands or perſonal eſtate.

VII. *Be it further enacted,* That any deed of lands or tenement made for love and affection, or where any perſonal eſtate delivered a child ſhall be charged in writing by the inteſtate, or by his order, or a memorandum made thereof, or delivered expreſsly for that purpoſe, before two witneſſes who were bid to take notice thereof, the ſame ſhall be deemed and taken an advancement to ſuch child or

children

children to the value of ſuch lands, tenements, or perſonal eſtate, within the intent of this act.

VIII. *And be it further enacted*, That after the deceaſe of any perſon inteſtate, adminiſtration of ſuch inteſtate's goods and eſtate ſhall be granted unto the widow, or next of kin to the inteſtate, (upwards of twenty-one years of age) or both, as the Judge of Probate ſhall think fit, within thirty days, or ſooner, and an inventory taken of all the eſtate of the deceaſed, within three months or ſooner, by three ſuitable perſons appointed by, and ſworn before the Judge of Probate, for the faithful diſcharge of that truſt. And after the expiration of thirty days from the death of any perſon inteſtate, in caſe the widow or next of kin, ſhall refuſe or neglect to take out letters of adminiſtration, being cited before the Judge for that purpoſe, in caſe they are reſident within the county, he may commit adminiſtration of any ſuch eſtate to ſome one or more of the principal creditors, if accepted by them or others, as he ſhall think fit upon their refuſal; and every adminiſtrator ſhall, before he or ſhe ſhall enter upon the execution of that truſt, give bond to the Judge of Probate, with good and ſufficient ſureties, upon condition among other things, to make and return a true inventory of the eſtate adminiſtered on into the Probate Office, within three months, and to render an account of adminiſtration, within one year from the time of taking adminiſtration, which bond ſhall be in the form following:

Perſons dying inteſtate, adminiſtration to be granted to the widow, or next of kin, and an inventory to be taken of the eſtate.

In caſe of refuſal of the widow or next of kin, adminiſtration to be granted to ſome one of the principal creditors.

Adminiſtrators to give bond.

Know all Men by theſe Preſents, That we within the Commonwealth of *Maſſachuſetts*, are holden, and ſtand firmly bound and obliged unto Eſq. Judge of Probate of wills, and granting adminiſtration within the county of in the full ſum of *pounds*, in lawful money, of ſaid Commonwealth, to be paid unto the ſaid his ſucceſſors in the ſaid office, or aſſigns; to the true payment whereof, we do bind ourſelves, and each of us, our and each of our heirs, executors, and adminiſtrators, jointly and ſeverally, for the whole and in the whole, firmly by theſe preſents. Sealed with our ſeals, dated the day of *Anno Domini*, one thouſand ſeven hundred and

Form of the bond.

The condition of this preſent obligation is ſuch, That if the above bounden do make or cauſe to be made, a true and perfect inventory of all and ſingular, the goods, chattels, rights and credits, of the ſaid deceaſed, which have, or ſhall come to the hands, poſſeſſion or knowledge of the ſaid or into the hands and poſſeſſion of any other perſon or perſons for and the ſame ſo made, do exhibit, or cauſe to be exhibited, into the Regiſtry of the Court of Probate, for the ſaid county of at or before the day of next enſuing; and the ſame goods, chattels, rights and credits, and all other the goods, chattels, rights, and credits, of the ſaid deceaſed, at the time of death, which at any time after ſhall come to the hands and poſſeſſion of the ſaid or into the hands and poſſeſſion of any other perſon or perſons for do well and truly adminiſter according to law: And further do make

make or cauſe to be made, a juſt and true account of ſaid adminiſtration, upon oath, at or before the day of which will be the year of our Lord, one thouſand ſeven hundred and . And all the reſt and reſidue of the ſaid goods, chattels, rights, and credits, which ſhall be found remaining upon the ſaid adminiſtrat account (the ſame being firſt examined and allowed of by the Judge or Judges, for the time being, of probate of wills, and granting adminiſtrations within the county of aforeſaid) and ſhall deliver and pay unto ſuch perſon or perſons reſpectively, as the ſaid Judge or Judges, by his or their decree or ſentence, purſuant to law, ſhall limit and appoint: And if it ſhall hereafter appear, that any laſt will and teſtament was made by the ſaid deceaſed, and the executor or executors therein named, do exhibit the ſame into the Court of Probate, for the ſaid county of making requeſt to have it allowed and approved accordingly; if the ſaid within bounden being thereunto required, do render and deliver the ſaid letter of adminiſtration (approbation of ſuch teſtament being firſt had and made) into the ſaid Court: Then the before-written obligation to be void and of none effect, or elſe to abide and remain in full force and virtue. Sealed and delivered in preſence of us.

Where two or more have letters of adminiſtration granted and one or more of them take all or part of the inteſtate eſtate, and refuſe to account with the other adminiſtrator, the one aggrieved may bring his action.

IX. *And be it further enacted*, That where two or more have letters of adminiſtration granted them of any inteſtate eſtate, and one or more of them take all or the greateſt part of ſuch eſtate into his or their hands, and refuſe to pay the debts or funeral charges of ſuch inteſtate, or refuſe to account with the other adminiſtrator, then and in ſuch caſe it ſhall and may be lawful for ſuch aggrieved adminiſtrator to bring his action of account againſt the other adminiſtrator or adminiſtrators, and recover his proportionable ſhare of ſuch inteſtate's eſtate as ſhall belong or appertain to him.

No adminiſtration to be granted until.

X. *And be it further enacted*, That no adminiſtration of the goods or eſtate of any deceaſed perſon, not adminiſtered upon by a former adminiſtration or executor, ſhall be granted until it ſhall evidently appear to the Judge of Probate, by the oath of the party applying therefor, or otherways, that there is ſuch perſonal eſtate of the deceaſed, to the amount of *five pounds*, or upwards, or debts of the like or greater value, due from the deceaſed's eſtate unpaid. Nor ſhall adminiſtration be originally granted upon the eſtate of any deceaſed perſon, after the expiration of twenty years, from the death of ſuch perſon.

Judges of Probate empowered when they make out their warrants for a diviſion of real eſtates, to direct the committee in this caſe.

XI. *And be it further enacted*, That the reſpective Judges of Probate within this government be, and hereby are directed and empowered, when they make out their warrants for the diviſion of the real eſtate of any perſon dying inteſtate to and among the heirs, or for aſſigning the widow's dower, where ſuch eſtate or any part thereof lies in common or undivided with the real eſtate of any other perſon, to direct the committee named in ſuch warrant, firſt to ſever and divide the inteſtate's eſtate from the eſtate with which it lies in common as aforeſaid; the ſaid committee to give timely notice to all parties intereſted, to be preſent if they ſee cauſe;

cauſe; and ſuch diviſion ſo made and accepted by the Judge, and duly recorded in the probate office for the ſame county, ſhall be binding on all perſons intereſted. *Provided*, That where any minors or perſons *non compos*, or otherwiſe incapacitated to take care of their eſtates, are intereſted in either eſtates, or out of the government, guardians ſhall be appointed over them, and ſome diſcreet perſon ſhall be appointed by the Judge to repreſent and act for ſuch abſent party before ſuch diviſion is made. *Provided alſo*, That before the order of ſuch diviſion iſſue, it be made to appear to the Judge of Probate, that the ſeveral perſons intereſted in ſuch eſtate if living within this government, or the attorney of ſuch as are abſent, and have attornies reſiding within this government, have been duly notified of ſuch partition, and have had opportunity to make their exception to the ſame. Proviſo.

When deviſees make application for a diviſion, it ſhall be lawful for the Judge of Probate to order the whole of the real eſtate to be divided.

XII. *And be it further enacted*, That when and ſo often as any deviſee (or his guardian) who holds any real eſtate, in partnerſhip with any perſon or perſons, by force of any laſt will and teſtament, ſhall make application to the Judge of Probate of wills, &c. in the county where ſuch eſtate lies, for a diviſion thereof, it ſhall and may be lawful for ſuch Judge of Probate to order the whole of the real eſtate ſo deviſed (or that part of it the partition whereof is requeſted) to be divided to and among the deviſees, in proportion according to the will of the teſtator, by five or three good and diſcreet freeholders of the ſame county, to be appointed by and ſworn before the ſaid Judge, to the due performance of that ſervice; notice being firſt given to all parties concerned to be preſent at the making of ſuch partition, if they ſee cauſe, which partition or diviſion being returned into the probate office, and approved by the Judge, and there recorded, ſhall be valid in the law to all intents and purpoſes, unleſs upon the appeal of any party aggrieved at the partition ſo made, the ſame ſhould be reverſed or altered before the Supreme Court of Probate. And whereas it ſometimes happens, that real eſtates deviſed by will, lie in common and undivided with other real eſtates:

Partition to be made between the eſtate given by will and any other land.

XIII. *Be it further enacted*, That in every ſuch caſe it ſhall and may be lawful for the ſaid Judge of Probate, to order and direct the freeholders aforeſaid, firſt to make partition between the eſtate given by will, and any other land or real eſtate lying in common therewith, in the ſame way and manner as is before provided for dividing inteſtate eſtates from any other eſtates, with which they may lay in common. *Provided* that no partition ſhall be made when the proportion belonging to the deviſees, or any of them, ſhall by the tenor of the deviſee, appear to be diſputable and uncertain. *Provided alſo*, That where any of the intereſted are minors, or perſons *non compos*, or otherways incapacitated to take care of their eſtates, or out of the government, guardians ſhall firſt be appointed for ſuch minors or perſons *non compos*, or otherways incapacitated, and ſome diſcreet and diſintereſted perſon ſhall be appointed by the ſaid Judge, to repreſent and act for ſuch abſent party. Proviſo.

XIV. *And be it further enacted*, That when partition or diviſion ſhall be made by any Judge of Probate, of the real eſtate of any deceaſed

ceaſed perſon, agreeable to the method before preſcribed, and any one or more of the intereſted party, ſhall neglect or refuſe to pay their juſt proportion of the charge, which may attend ſuch diviſion or ſettlement, it ſhall and may be lawful for the Judge to iſſue a warrant of diſtreſs againſt any delinquent or delinquents intereſted as aforeſaid, provided an account of ſuch charge be firſt laid before the Judge, and the juſt proportion of the perſon intereſted, ſettled and allowed, they having been duly notified to be preſent at ſuch ſettlement or allowance.

Parties refuſing to pay charges of diviſion, the Judge of Probate to iſſue a warrant of diſtreſs.

Proviſo.

XV. *And be it further enacted*, That when any meſſuage, tract of land, or other tenement, ſhall be of greater value than either parties part or ſhare in the eſtate to be divided, and cannot at the ſame time be ſub-divided, or part thereof aſſigned to one and part to another, (without great inconvenience) the ſame may be ſettled or aſſigned to one of the parties, ſuch party to whom the ſame ſhall be ſo aſſigned paying ſuch ſum or ſums of money to ſuch party or parties, as by means thereof have leſs than their ſhare of the real eſtate, as the committee appointed to make partition ſhall award.

Settlements to be made when any meſſuage, &c. is of greater value than either parties part.

XVI. *Be it further enacted*, That in caſe the eſtate of any perſon dying inteſtate, ſhall lay more than ten miles from the dwelling-place of the Judge of Probate, of the county in which ſuch eſtate lies, then it ſhall and may be lawful for any Juſtice of the Peace, to appoint the appraiſers of ſuch eſtate; and in caſe any part of the eſtate of any perſon dying teſtate or inteſtate, ſhall lay without the limits of the county of the Judge of Probate, to whom it appertains to act as ſuch in the ſettlement of the ſame, then it ſhall and may be lawful for any Juſtice of the Peace to appoint the appraiſers of ſuch part of ſuch eſtate; and in both the caſes laſt mentioned, the Juſtice of the Peace appointing appraiſers, ſhall adminiſter to them the neceſſary oaths, and ſhall certify the ſame, together with the appointment, which ſhall be conſidered as valid and effectual in law as if ſuch perſons were appointed and ſworn by the Judge of Probate, any thing in this act to the contrary notwithſtanding.

Juſtices of the Peace empowered to appoint the appraiſers, in caſe.

Provided nevertheleſs, That every adminiſtrator ſhall be held to account with the Judge of Probate for the perſonal eſtate of the deceaſed, as the ſame ſhall be appraiſed, unleſs the Judge ſhall think it will be more for the benefit of thoſe concerned otherwiſe to diſpoſe of the ſame; in which caſe the ſaid Judge ſhall order the ſame, or any part thereof, to be ſold at publick auction or at private ſale, in ſuch manner as he ſhall determine will beſt ſerve the intereſt of all perſons concerned, and the adminiſtrator ſhall account for ſuch eſtate as the ſame was ſold.

Proviſo.

Whereas it ſometimes happens, that for want of prudent management in executors, adminiſtrators or guardians, who are empowered to ſell real eſtates, ſuch eſtates are diſpoſed of below their true value, to the great injury of the heirs and creditors:

XVII. *Be it therefore enacted by the authority aforeſaid*, That every executor, adminiſtrator or guardian, who may obtain a legal order for ſelling real eſtate, ſhall, previous to the ſale, before ſome Juſtice of the Peace, take the following oath:

Executors, &c. to be under oath previous to ſales.

"I.

"I A. B. do ſolemnly ſwear, that in diſpoſing of the eſtate lately belonging to now deceaſed, I will uſe my beſt ſkill and judgment in fixing on the time and place of ſale; and that I will exert my utmoſt endeavours to diſpoſe of the ſame in ſuch manner as will produce the greateſt advantage to all perſons intereſted therein, and that without any ſiniſter views whatever." Form of the oath.

And the ſaid executor, adminiſtrator or guardian, ſhall return to the Judge of Probate a certificate of the ſame, under the hand of the Juſtice before whom ſuch oath was taken.

[This act paſſed *March* 9, 1784.]

An Act directing the Mode of transfering Real Eſtates by Deed, and for preventing Fraud therein.

WHEREAS it is neceſſary (to prevent uncertainty, fraud and perjury, in the transfering real eſtates) that a mode therefor ſhould be eſtabliſhed, eaſy, certain and notorious: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all leaſes, eſtates, intereſts of freehold, or terms of years, or any uncertain intereſts of, in or out of any meſſuages, lands, tenements, or hereditaments, made or created by livery and ſeizen only, or by parole, and not put in writing, and ſigned by the parties ſo making or creating the ſame, or their agents thereunto lawfully authorized by writing, ſhall have the force and effect of leaſes or eſtates at will only; and ſhall not, either in law or equity, be deemed or taken to have any other, or greater force or effect; any conſideration for making any ſuch parole, leaſes, or eſtates, notwithſtanding. And no leaſes, eſtates, or intereſts, either of freehold or term of years, or any uncertain intereſt of, in, to, or out of any meſſuages, lands, tenements, or hereditaments, ſhall at any time be aſſigned, granted, or ſurrendered, unleſs it be by deed or note in writing, ſigned by the party ſo aſſigning, granting, or ſurrendering the ſame, or their agents thereunto lawfully authorized by writing, or by act and operation of law. Parole leaſes, &c. to have the force of eſtates at will only.

II. *And be it further enacted,* That no action ſhall hereafter be maintained upon any contract or ſale of lands, tenements, or hereditaments, or any intereſt in or concerning the ſame, unleſs the agreement upon which ſuch action ſhall be brought, or ſome memorandum or note thereof ſhall be in writing, and ſigned by the party to be charged therewith, or ſome other perſon thereunto by him lawfully authorized. No actions to be maintained upon any contract, unleſs.

III. *And be it further enacted,* That all grants and aſſignments, as well as all declarations or creations of truſts or confidences of any lands, tenements, or hereditaments, ſhall be manifeſted and proved by ſome writing ſigned by the party, who is by law enabled All grants, &c. of lands, to be manifeſted and proved by writing.

to

to grant, aſſign, or to declare ſuch truſt, or by his laſt will in writing, or elſe the ſame ſhall be utterly void and of no effect. *Provided always*, That where any conveyance ſhall be made of any lands, tenements, or hereditaments, by which a truſt or confidence ſhall or may ariſe or reſult, by the implication or conſtruction of law, or be transfered or extinguiſhed by an act or operation of law; then, and in every ſuch caſe, ſuch truſt or confidence ſhall be of the like force and effect, as the ſame would have been if this act had not been made; any thing herein contained to the contrary notwithſtanding.

Proviſo.

IV. *And be it further enacted by the authority aforeſaid*, That all deeds or other conveyances of any lands, tenements or hereditaments, lying within this Commonwealth, ſigned and ſealed by the party or parties granting the ſame, having good and lawful right or authority thereunto, and acknowledged by ſuch grantor or grantors, before a Juſtice of the Peace in this State, or before a Juſtice of the Peace or magiſtrate in ſome other of the United States of *America*, (or in any other ſtate or kingdom wherein the grantor or vendor may reſide at the time of making and executing the deed) and recorded at length in the Regiſtry of Deeds in the county where ſuch lands, tenements, or hereditaments do lie, ſhall be valid to paſs the ſame, without any other act or ceremony in the law whatſoever. And no bargain, ſale, mortgage or other conveyance in fee ſimple, fee tale, or for term of life, or any leaſe for more than ſeven years from the making thereof, of any lands, tenements or hereditaments, within this Commonwealth, ſhall be good and effectual in law to hold ſuch lands, tenements, or hereditaments, againſt any other perſon or perſons but the grantor or grantors, and their heirs only, unleſs the deed or deeds thereof be acknowledged and recorded in manner aforeſaid *Provided nevertheleſs*, That when any grantor or leſſor as aforeſaid ſhall go beyond ſea, or be removed out of this government, or be dead, before the deed or conveyance by him executed, ſhall be acknowledged as aforeſaid, in every ſuch caſe the proof of ſuch deed or conveyance, made by the oath of one or more of the witneſſes whoſe names may be thereunto ſubſcribed, before any Court of record within this Commonwealth, ſhall be equivalent to the parties own acknowledgment thereof before a Juſtice of the Peace as aforeſaid.

Deeds executed by ſigning, ſealing, &c. to be valid.

Proviſo.

V. *And be it further enacted*, That if any grantor or leſſor of any lands, tenements or hereditaments, ſhall refuſe to acknowledge any bargain, ſale, mortgage or other conveyance as aforeſaid, it ſhall be lawful for ſuch grantee or leſſee to leave a copy of ſuch deed or leaſe, compared with the original by the Regiſter, in the Regiſter's office, and ſuch copy ſo left ſhall be deemed ſufficient caution to all perſons againſt purchaſing or extending execution thereon for the ſpace of forty days from the time of leaving ſuch copy. And any Juſtice of the Peace in the ſame county, after ſuch refuſal, at the requeſt of the grantee or leſſee, his heirs, executors, adminiſtrators or aſſigns, may iſſue a ſummons for ſuch grantor or leſſor to appear (if he ſee cauſe) at a certain time and place therein mentioned, to hear the teſtimony of the ſubſcribing witneſſes thereunto; which

Grantors refuſing to acknowledge their deeds.

ſummons

ſummons ſhall be ſerved by the proper officer, ſeven days at the leaſt before the time therein aſſigned for proving the deed; and at ſuch time and place, whether the grantor or leſſor be preſent or not, it being made to appear by the oath of one or more of the witneſſes thereunto ſubſcribed, that they ſaw the ſaid grantor (or leſſor) voluntarily ſign and ſeal the deed, and that they ſubſcribed their names as witneſſes thereunto at the ſame time, ſuch proceedings, and a certificate thereof under the hand of the Juſtice annexed to the deed (wherein the preſence or abſence of the adverſe party ſhall be noted) ſhall be equivalent to the acknowledgment of the grantor before a Juſtice of the Peace.

Proviſo.

Provided, That nothing in this act ſhall be conſtrued, deemed or extended, to bar any widow of any vender or mortgager of lands or tenements from her dower or right in or to ſuch lands or tenements, who did not join with her huſband in ſuch ſale or mortgage, or otherwiſe lawfully bar or exclude herſelf from ſuch dower or right.

How mortgage ſhall be diſcharged.

VI. *And be it further enacted,* That any mortgagee of any lands, tenements or hereditaments, his or her heirs, executors or adminiſtrators, having received full ſatisfaction and payment of all ſuch ſum or ſums of money as are really due to him by ſuch mortgage, ſhall, at the requeſt of the mortgagor, his heirs, executors or adminiſtrators, acknowledge and cauſe ſuch ſatisfaction and payment to be entered in the margin of the record of ſuch mortgage, in the Regiſter's office, and ſhall ſign the ſame, which ſhall forever after diſcharge, defeat and releaſe ſuch mortgage, and perpetually bar all actions to be brought thereupon in any Court of record. And if ſuch mortgagee, his heirs, executors or adminiſtrators, ſhall not, within ten days next after requeſt in that behalf made, and tender of his reaſonable charges, ſign and ſeal a diſcharge of the ſaid mortgage, and releaſe and quit claim to the eſtate therein mentioned to be granted, and acknowledge the ſame before a Juſtice of the Peace, or repair to the Regiſter's office, and there make and ſign ſuch diſcharge and acknowledgment as aforeſaid, ſhall be liable to make good all damages for want of ſuch diſcharge or releaſe, to be recovered by a ſpecial action of the caſe, in any Court of record, together with treble coſts of ſuit.

Former deeds valid.

VII. *And be it further enacted,* That all deeds of bargain, ſale, mortgage, or other conveyance of real eſtate heretofore made and executed according to former laws and uſage, ſhall be valid and effectual.

[This act paſſed *March* 10, 1784.]

An Act in addition to an Act, made in the Year of our Lord, one Thouſand ſeven Hundred and Eighty-four, entitled, "An Act directing the Mode of transfering Real Eſtates by Deed, and for preventing Fraud therein."

Preamble.

WHEREAS it is, in and by the ſaid act, among other things, enacted, "That all deeds ſhall be acknowledged before ſome Juſtice of the Peace, by the grantor or grantors," "Provided, that when any grantor or leſſor as aforeſaid, ſhall go beyond ſea, or be removed out of this government, or be dead, before the deed or conveyance by him executed, ſhall be acknowledged as aforeſaid, in every ſuch caſe the proof of ſuch deed or conveyance, made by the oath of one or more witneſſes, whoſe names may be thereunto ſubſcribed, before any Court of Record within this Commonwealth, ſhall be equivalent to the parties own acknowledgment thereof, before a Juſtice of the Peace as aforeſaid," but no proviſion is therein made where the witneſſes whoſe names may be thereunto ſubſcribed are dead, as well as the grantor or grantors:

In caſes where the grantor, &c. of any deed, may be deceaſed before the ſame is acknowledged; proof of the hand writing ſhall be equivalent.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That in all caſes which have or may hereafter happen, where the grantor or grantors of any deed, ſhall be deceaſed before the deed or conveyance by him executed, ſhall be acknowledged, and the witneſſes whoſe names may be ſubſcribed thereto, are alſo deceaſed, that the proof of the hand writing of the grantor or grantors, and of the ſubſcribing witneſſes thereto, made by the oath of two witneſſes before any Court of Record within this Commonwealth, ſhall be equivalent to the parties own acknowledgement thereof before a Juſtice of the Peace, as is in and by the ſaid act mentioned.

Proviſo.

Provided, That it ſhall be made to appear to the ſatisfaction of the Juſtices of the Court before whom ſuch proof ſhall be made, that the grantee or grantees mentioned in ſuch deed or conveyance, have in the life time of the grantor or grantors, taken actual poſſeſſion of the real eſtate conveyed by ſuch deed; and that the ſaid grantee or grantees, or ſome perſon or perſons, claiming under him or them, have continued ſuch actual poſſeſſion quietly, to the time when ſuch application ſhall be made to ſuch Court for the purpoſes aforeſaid.

[This act paſſed *June* 28, 1787.]

An Act directing the Settlement of the Eſtates of Perſons deceaſed, and for the Conveyance of Real Eſtates in certain Caſes.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when the goods and chattels belonging to the eſtate of any perſon deceaſed, or that hereafter may deceaſe, ſhall not be ſufficient to anſwer the juſt debts which the deceaſed owed or legacies given, upon repreſentation thereof, and the ſame being made to appear to the Supreme Judicial Court, at any term or ſitting of the ſaid Court, in any county in this Commonwealth, or the Court of Common Pleas in the county where the deceaſed perſon laſt dwelt, or in the county in which the ſaid real eſtate lies, the ſaid Courts are ſeverally and reſpectively authorized to empower and licence the executor or adminiſtrator of ſuch eſtate to make ſale of all or any part of the houſes, lands or tenements of the deceaſed, ſo far as ſhall be neceſſary to ſatisfy the juſt debts which the deceaſed owed at the time of his death, and legacies bequeathed in and by the laſt will and teſtament of the deceaſed, with incidental charges: And every executor or adminiſtrator being ſo licenced and authorized as aforeſaid, ſhall and may, by virtue of ſuch authority, make, ſign and execute, in due form of law, deeds and conveyances for ſuch houſes, lands or tenements as they ſhall ſo ſell, which inſtruments ſhall make as good a title to the purchaſer, his heirs and aſſigns, forever, as the teſtator or inteſtate, being of full age, of ſane mind and memory, in his or her life-time, might or could for a valuable conſideration. *Provided always,* That the executor or adminiſtrator, before ſale be made as aforeſaid, give thirty days publick notice, by poſting up notifications of ſuch ſale in the town or plantation where the lands lie, as well as where the deceaſed perſon laſt dwelt, and in the two next adjoining towns, as alſo in the ſhire town of the county; and whoſoever will give moſt, ſhall have the preference in ſuch ſale; and in caſe it be an inſolvent eſtate, the whole produce of ſuch ſale ſhall be divided in due proportion to and among the creditors.

Supreme Judicial Court empowered to licence executors to make ſale of lands, &c.

Proviſo.

And whereas, by the partial ſale of real eſtates for the payment of debts or legacies as aforeſaid, it often happens that the remainder thereof is much injured:

II. *Be it therefore enacted by the authority aforeſaid,* That whenever it ſhall be neceſſary that executors or adminiſtrators ſhall be empowered to ſell ſome part of the real eſtate of deceaſed teſtators or inteſtates, or for guardians to ſell ſome part of the real eſtate of minors or perſons *non compos mentis,* for the payment of juſt debts, legacies or taxes, or for the ſupport or legal expences of minors or perſons *non compos mentis,* and by ſuch partial ſale the reſidue of ſuch real eſtates would be greatly injured, and the ſame ſhall be repreſented and made to appear to the Juſtices of either of the aforeſaid Courts, on petition, and declaration filed, and duly proved therein, by the ſaid executors, adminiſtrators, or guardians, the Juſtices of the aforeſaid Courts reſpectively, may authorize and empower ſuch executors, adminiſtrators or guardians, to ſell and convey the whole

Executors, &c. empowered to ſell real eſtates for payment of debts.

or

or ſo much of ſuch real eſtates, as ſhall be moſt for the intereſt and benefit of the parties concerned therein, at publick auction, and good and ſufficient deed or deeds of conveyance thereof to make and execute; which deed or deeds, when duly aknowledged and recorded in the regiſtry of deeds for the county where the ſaid real eſtate lies, ſhall make a compleat and legal title in fee to the purchaſer or purchaſers thereof; provided the ſaid executors, adminiſtrators or guardians, give thirty days publick notice of ſuch intended ſale in manner and form herein before preſcribed; and provided alſo they firſt give bonds, with ſufficient ſureties, to the Judge of Probate for the county where the deceaſed teſtator or inteſtate laſt dwelt, and his eſtate inventoried, that he or ſhe will obſerve the rules and directions of law for the ſale of real eſtates by executors or adminiſtrators, and that the proceeds of the ſaid ſale, after the payment of juſt debts, legacies, taxes, and juſt debts for the ſupport of minors, and other legal expences and incidental charges, ſhall be put on intereſt on good ſecurity, and that the ſame ſhall be diſpoſed of agreeably to the rules of law.

Repreſentations made to be accompanied with a certificate of the Judge of Probate.

III. *And be it further enacted*, That every repreſentation to be made as aforeſaid, ſhall be accompanied with a certificate from the Judge of Probate of the county where the deceaſed perſon's eſtate was inventoried, certifying the value of the real eſtate and the value of the perſonal eſtate of ſuch deceaſed perſon, and the amount of his or her juſt debts; and alſo his opinion whether it be neceſſary that the whole or a part of the eſtate ſhould be ſold, or if part only, what part. And the ſaid Juſtices, previous to their paſſing on the ſaid repreſentation, ſhall order due notice to be given to all parties concerned, or their guardians, who do not ſignify their conſent to ſuch ſale, to ſhew cauſe, at ſuch time and place as they ſhall appoint, why ſuch licence ſhould not be granted. And in caſe any perſon concerned in the ſaid ſale be not an inhabitant of this Commonwealth, nor have any guardian, agent or attorney therein, who may repreſent him or her, the ſaid Juſtices may cauſe the ſaid petition to be continued for a reaſonable time; and the petitioner or petitioners ſhall give perſonal notice of the ſaid petition to ſuch abſent perſon, his or her agent, attorney or guardian, or cauſe the ſame to be publiſhed in ſome one of the *Boſton* news-papers, three weeks ſucceſſively. And the ſaid Juſtices, where they may think it expedient, may examine the ſaid petitioner or petitioners, on oath, touching the truth of facts ſet forth in the ſaid petition, and the circumſtances attending the ſame.

Juſtices to notify the parties concerned.

In caſe.

And whereas it may be often neceſſary to enable the repreſentatives of perſons deceaſed, to perform the engagements entered into by ſuch deceaſed perſons for the transfer of real eſtates:

IV. *Therefore be it further enacted*, That whenever it ſhall be repreſented and made to appear to the Juſtices of either of the aforeſaid Courts, in form aforeſaid, by any perſon or perſons, contracted with by bond, covenant or other contract under ſeal, that a deceaſed teſtator or inteſtate in his or her life-time, entered into ſuch bond, covenant or contract, to convey ſome real eſtate to him or her, but was prevented by death; and that ſuch perſon or perſons, contract-

ed

ed with as aforeſaid, have on his, her or their part performed, or ſtand ready to perform, the conditions of ſuch bond, covenant or contract made with the deceaſed, the ſaid Juſtices may, after due notice given to all concerned as aforeſaid, in form aforeſaid, and a full hearing had, grant licence to, and empower the executors or adminiſtrators of ſuch deceaſed obligor, covenantor or contractor, to make and execute ſuch conveyance or conveyances, to ſuch perſon or perſons contracted with as aforeſaid, as it ſhall appear the ſaid obligor, covenantor or contractor, would by his bond, covenant or contract, be obliged to make and execute, in caſe he, ſhe or they, were living at the time of the performance of the conditions of the bond, covenant or contract, by the contractors on their part making reaſonable allowances for any alteration, improvements or injuries, that may be made or done in the ſame eſtate ſince ſuch contract was made, as the ſaid Juſtices may award; which conveyance or conveyances, when the inſtruments thereof are duly aknowledged and recorded in the regiſtry of deeds for the county where ſuch eſtate ſhall lie, ſhall be good and valid; and the monies or conſideration paid for ſuch eſtate, if not paid to the deceaſed contractor in his life-time, ſhall be aſſets in the hands of the ſaid executors or adminiſtrators, and be apportioned among the repreſentatives of the deceaſed as other perſonal eſtate.

Juſtices to grant licence to executors or adminiſtrators to convey real eſtate in certain caſes.

V. *Be it further enacted by the authority aforeſaid*, That when it ſhall fully appear to the Juſtices of the Supreme Judicial Court aforeſaid, by the petition and repreſentation of the friends or guardians of minors intereſted in the real eſtate of any deceaſed teſtator or inteſtate, that it would be for the benefit of ſuch minors, or perſons *non compos mentis*, that their intereſt therein ſhould be diſpoſed of, and the proceeds thereof be put out and ſecured to them on intereſt, the ſaid Juſtices laſt mentioned, after a full examination on the oath of the petitioner or otherwiſe, may authorize ſome ſuitable perſon or perſons to ſell and convey ſuch eſtate or part thereof, by deed or deeds duly acknowledged and recorded in the regiſtry of deeds as aforeſaid; provided ſuch perſon or perſons firſt give bond, with ſufficient ſureties, to the Judge of Probate for the county where the ſaid deceaſed perſon laſt dwelt, to obſerve the rules and directions of law in the ſale of real eſtates by executors or adminiſtrators in the firſt enacting clauſe herein preſcribed; and to account for and make payment of the proceeds of the ſaid ſale, agreeable to the rules of law. *Provided*, That the ſaid Judge of Probate ſhall certify that the whole or a part of the ſaid eſtate is, in his opinion, neceſſary to be ſold, or if part only, what part.

Juſtices of the Supreme Judicial Court, after full examination on the oath of petitioners, may authorize perſons to ſell and convey eſtates.

Proviſo.

VI. *And be it further enacted*, That when it ſhall appear to the ſaid Juſtices, on examination, that the ſaid petition or petitions, in any of the foregoing applications, are unreaſonable, the ſaid Juſtices may award reaſonable coſts to ſuch reſpondents as ſhall appear and object thereto.

Juſtices to award reaſonable coſts.

VII. *And be it further enacted*, That the real eſtate of any teſtator or inteſtate, is and ſhall be liable to be taken and levied upon by any execution iſſuing upon judgments recovered againſt executors

Real eſtates liable to be taken and levied upon executions iſſuing.

or adminiſtrators, in ſuch capacity, being the proper debts of the teſtator or inteſtate, and that the method of levying, appraiſing and recording, ſhall be the ſame as by law is provided reſpecting other real eſtates levied upon and taken in execution, and may be redeemed by the executor, adminiſtrator or heir, in like time and manner.

Executors, &c. neglecting to raiſe money,

VIII. *And be it further enacted*, That when any executor or adminiſtrator ſhall neglect or unreaſonably delay to raiſe money out of the teſtator's or inteſtate's eſtate, by collecting the debts due to ſuch eſtate, and by ſelling the perſonal eſtate, or the real eſtate (if need be, and he has power or can obtain licence to ſell the ſame) or ſhall neglect to pay what he has in his hands, and by ſuch neglect or delay ſhall ſubject the teſtator's or inteſtate's real or perſonal eſtate to be taken in execution, the ſame ſhall be deemed waſte and unfaithful adminiſtration in ſuch executor or adminiſtrator.

To be deemed waſte, &c. in ſuch executor.

How writs of attachment and execution ſhall run.

IX. *And be it further enacted*, That all writs of attachment and executions, ſhall run only againſt the goods or eſtate of the party deceaſed, in the hands of executors or adminiſtrators, and not againſt their bodies, nor ſhall any executor or adminiſtrator be held to ſpecial bail upon mean proceſs, nor his own proper goods or eſtate be attached, or his perſon be arreſted or taken in execution for the debts or legacies of the teſtator or inteſtate, but upon ſuggeſtion of waſte, founded on a return made by the ſheriff, that he could not find any goods or eſtate of the teſtator or inteſtate; in which caſe a writ commonly called *ſcire facias*, ſhall be iſſued out of the clerk's office of the ſame Court, againſt ſuch executor or adminiſtrator, which writ being duly ſerved and returned, if the executor or adminiſtrator make default of appearance, or coming in, ſhall not ſhew cauſe ſufficient to the contrary, execution ſhall be adjudged and awarded againſt him of his own proper goods and eſtate to the value of ſuch waſte, where it can be aſcertained, otherways for the whole ſum recovered; and for want of goods or eſtate, againſt the body of ſuch executor or adminiſtrator.

In caſe of the death of an appellant or appellee, before the ſitting of the Court appealed unto.

X. *And be it further enacted*, That in caſe of the death of any party, either the appellant or appellee, before the ſitting of the Court appealed unto, or where any action or ſuit is or ſhall be depending, either in the Court of Common Pleas, or in the Supreme Judicial Court, in any county of this Commonwealth, and it ſo happen that either party be taken away by death before final judgment, the executor or adminiſtrator of ſuch deceaſed party, who was plaintiff, complainant or defendant (in caſe the cauſe of action doth by law ſurvive) ſhall have full power to proſecute or defend any ſuch ſuit or action from Court to Court, until final judgment; and the defendants or appellees are hereby obliged to anſwer to ſuch actions accordingly; and the Juſtices of the Court of Common Pleas and Supreme Judicial Court reſpectively, before whom ſuch cauſes are or may be triable and depending, are hereby empowered and directed to hear and determine all ſuch cauſes, proceed to judgment and award execution accordingly: And if it ſhall ſo happen that the executor or adminiſtrator of the deceaſed hath not ſuitable time in the judgment of the Court where ſuch action or ſuit ſhall be pending, and doth by law ſurvive as aforeſaid, to prepare for managing the cauſe,

cauſe, or to become duly qualified to proſecute or defend the ſame; in ſuch caſe it ſhall and may be lawful for the Court to ſuſpend the hearing and trying thereof until the next term. And if by the verdict of a Jury, or by the default or neglect of the executor or adminiſtrator in proſecuting or defending ſuch ſuit, after the executor or adminiſtrator ſhall have appeared and undertaken in his capacity to proſecute or defend the ſuit, judgment paſs againſt the executor or adminiſtrator, the Supreme Judicial Court and Court of Common Pleas are hereby reſpectively authorized, empowered and directed, to enter up judgment for or againſt the eſtate of the deceaſed, in their hands and under their adminiſtration, as the caſe may require.

XI. *And be it further enacted,* That each Judge of Probate within his county be, and hereby is fully authorized and empowered, to call before him and to examine upon oath, any perſon ſuſpected and complained of by any executor or adminiſtrator, heir, creditor, legatee or other perſon, having lawful right or claim to the eſtate of any perſon deceaſed, to have concealed, embezzled or conveyed away any of the money, goods or chattels left by the teſtator or inteſtate, for the diſcovery of the ſame.—And if the perſon ſuſpected and complained of as aforeſaid, ſhall refuſe to be examined, or to anſwer interrogatories, upon oath, reſpecting the eſtate which he or ſhe may be ſuſpected of concealing, embezzling or conveying away, it ſhall and may be lawful for, and the ſaid Judge is hereby empowered to commit ſuch perſon, ſo refuſing to be examined or anſwer interrogatories upon oath as aforeſaid, unto the common goal of the county, there to remain until he or ſhe ſhall conſent to be examined, and anſwer interrogatories upon oath as aforeſaid, or be releaſed by the conſent of the perſon ſuſpecting and complaining againſt him or her, or by order of the Supreme Judicial Court.

Judges of Probate empowered to examine upon oath perſons ſuſpected and complained of by executors or adminiſtrators.

XII. *And be it further enacted,* That the ſeveral Judges of Probate be, and hereby are empowered, to convene before them any perſon that has been or may hereafter be intruſted by any executor or adminiſtrator with any part of the eſtate of the teſtator or inteſtate (and to be aſſiſting to ſuch executor or adminiſtrator in the execution of their truſt) who ſhall refuſe, upon a citation iſſued from the Judge of Probate for that purpoſe, to appear before him, and render a full account, upon oath, of any money, goods or chattels, and of any bonds, accounts or other papers belonging to the eſtate of the teſtator or inteſtate, which he ſhall have taken into his hands or cuſtody; and of his proceeding for and in behalf of ſuch executor or adminiſtrator in his capacity as ſuch. And if ſuch perſon ſhall refuſe to render account as aforeſaid, ſuch Judge may proceed againſt him in the way and manner before directed for perſons ſuſpected of concealment, who refuſe to anſwer interrogatories upon oath.

Witneſſes refuſing to appear.

Penalty.

XIII. *And be it further enacted,* That when any perſon ſhall be cited to appear as a witneſs before the Judge of Probate in any cauſe or hearing, and ſuch perſon ſhall refuſe to appear or give evidence, he or ſhe ſhall be liable to the like penalty or damage as ſuch perſon would be liable unto for refuſing to appear or give evidence in any Court of Common Pleas.

XIV.

In caſes where appraiſers, &c. have been appointed.

XIV. *And be it further enacted*, That in all caſes where the appraiſers, commiſſioners or dividors, appointed by the Judge to perform any ſervice reſpecting the eſtate of any perſon deceaſed, or perſons appointed to ſet off the widow's dower therein, and are by law directed to be under oath, or ſworn by the Judge of Probate, they may be ſworn before a Juſtice of the Peace; and in caſe there be no Juſtice of the Peace in the ſame town, they may be ſworn before the town-clerk; a certificate of ſuch oath to be returned to the Probate-Office from whence the warrant or commiſſion appointing them iſſued.

[This act paſſed *March* 4, 1784.]

An Act for the ſpeedy Aſſignment of Dower, and for the preventing of Strip and Waſte by Tenants therein.

Heir, &c. to render dower within one month next after demand.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when the heir or other perſon having the next immediate eſtate of freehold or inheritance, ſhall not within one month next after demand made, aſſign and ſet out to the widow of the deceaſed, her dower or juſt third part of and in all lands, tenements, and hereditaments, whereof by law ſhe is or may be dowable, to her ſatisfaction, according to the true intendment of law, then ſuch widow may ſue for and recover the ſame by writ of dower, to be brought againſt the tenant in poſſeſſion, or ſuch perſons who have or claim right or inheritance in the ſame eſtate, in manner and form as the law preſcribes.

Dower to be ſet forth by three diſintereſted freeholders, upon oath.

II. *And be it further enacted*, That upon rendering judgment for any woman to recover her dower in any lands, tenements, or hereditaments, reaſonable damage ſhall alſo be awarded to her from the time of the demand and refuſal to aſſign to her, her reaſonable dower. And a writ of ſeiſin ſhall be directed to the ſheriff of the county, his under ſheriff or deputy, in manner and form as is by law preſcribed; and the ſheriff or other perſon unto whom by law ſuch writ of ſeiſin is directed, ſhall cauſe her dower in ſuch eſtate to be ſet forth unto her by three diſintereſted freeholders of the ſame county, under oath, (to be adminiſtered by any Juſtice of the Peace) to ſet forth the ſame equally and impartially without favour or affection, as conveniently as may be.

Eſtates where no diviſion can be made, dower to be aſſigned as of one third part of the rents, iſſues or profits.

III. *And be it further enacted*, That of eſtates of which a woman is dowable and that be entire, and where no diviſion can be made by meets and bounds, dower ſhall be aſſigned thereof in a ſpecial manner, as of a third part of the rents, iſſues, or profits, to be computed and aſcertained in manner as aforeſaid; and no woman that ſhall be endowed of any lands, tenements, or hereditaments as aforeſaid, ſhall commit or ſuffer any ſtrip or waſte thereon,

upon

upon penalty of forfeiting the part of the eſtate upon which ſuch ſtrip or waſte ſhall be made, and the damages aſſeſſed for waſte, to him or them that have the immediate eſtate of freehold or inheritance, in remainder or reverſion, by an action of waſte to be brought therefor. And all tenants in dower ſhall maintain the houſes and tenements with the fences and appurtenances, whereof they may be endowed, in good repair during the term, and ſhall leave the ſame ſo at the expiration thereof. And the writs of dower and ſeiſin, ſhall be in form following:

Commonwealth of *Maſſachuſetts.*

—— ſſ.

L. S. *To the Sheriff of our county of* S——, *or his Deputy.*

GREETING. Writ of dower.

WE command you, that you ſummon of in our ſaid county of *S*——, if may be found in your precinct, to appear before our Juſtices of our Court of Common Pleas next to be holden at within and for our ſaid county of *S*——, upon the Tueſday in next; then and there in our ſaid Court to anſwer unto of in a plea of dower, for that

[*Here the declaration.*]

to the damage of the ſaid as ſaith, the ſum of *pounds*, as ſhall then and there appear. Witneſs *T*— *N*—, Eſq. at *B*—, the day of in the year of our LORD,

L. M. Clerk.

[*Writ of ſeiſin.*]

Commonwealth of *Maſſachuſetts.*

S—— ſſ.

L.S. *To the Sheriff of our ſaid county of* S—, *or his Deputy.*

GREETING. Writ of ſeiſin.

WHEREAS who was the wife of *E. D*—, late of *B*, in the county aforeſaid (addition) deceaſed, before our Juſtices of our Court of holden at *B*. for our county aforeſaid, on the day of now laſt paſt, did recover ſeiſin againſt *A. B.* of *B.* aforeſaid, (addition) of one third part of a certain meſſuage or tenement, with the appurtenances, ſituate in *B* aforeſaid, in the poſſeſſion of the ſaid *A. B.* (addition) as her dower of the endowment of the ſaid *E. D.* her certain huſband, by our writ of dower, whereof ſhe hath nothing; therefore we command you, that to the ſaid full ſeiſin of one third part of the aforeſaid meſſuage or tenement, with the appurtenances, you cauſe to be had without delay, to hold to in ſeveralty by meets and bounds. We command you alſo, that of the goods or chattels of the ſaid *A. B.* within your precinct, you cauſe to be paid and ſatisfied unto the ſaid at the value thereof in money, the ſum of for damages awarded her by our ſaid Court, for her being held and kept out of her dower aforeſaid, and coſts expended on this ſuit, with *ſhillings* more for this writ; and

thereof alſo to ſatisfy yourſelf your own fees; and for want of goods or chattels of the ſaid *A. B.* to be by him ſhewn unto or found within your precinct to ſatisfy the ſame, we command you to take his body, and to commit him to the keeper of our goal in *B*——, in our county aforeſaid, within the ſaid priſon, whom we likewiſe command to receive the ſaid *A. B.* and him ſafely to keep until he pay unto the ſaid the full ſum abovementioned, and alſo ſatisfy your fees.

Hereof fail not, and make return of this writ, and how you ſhall have executed the ſame, to our next Court of to be holden at *B*——, for our ſaid county of *S*——, on the day of next. Witneſs, *E. H.* Eſq. at *B.* the day of in the year of our LORD,

Clerk.

[This act paſſed *March* 11, 1784.]

An Act for the more eaſy Partition of Lands, or other Real Eſtate.

Preamble.

WHEREAS the partition of lands and other real eſtate among the perſons intereſted, though much deſired and of great advantage, is often hindered and delayed by reaſon that infants are intereſted, or that the parties concerned are numerous and live remote from each other, and ſometimes in parts beyond ſeas, and are ſome of them unknown:

Supreme Judicial Court, or Court of Common Pleas, ſeverally authorized to appoint five or three diſintereſted freeholders to make partition of real eſtates.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That any perſon or perſons intereſted with others in any lot, tract of land, or other real eſtate, making application (either by themſelves or their agents, attornies or guardians) to the Supreme Judicial Court of this Commonwealth, or Court of Common Pleas, of the county in which ſuch land or other real eſtate lies; the ſaid Courts are ſeverally authorized and empowered to cauſe partition to be made of ſuch lands or other real eſtate, and the ſhare or ſhares of the party or parties applying for the ſame, to be ſet off and divided from the reſt. The partition to be made by five or three freeholders, under oaths, to be appointed by the ſaid Court who ſhall order the partition, and a return of ſuch partition to be made into the clerk's office of the ſaid Court; and the partition or diviſion ſo made being accepted by the ſaid Court which ordered the diviſion to be made, and there recorded, and alſo recorded in the Regiſtry of Deeds, in the county where ſuch eſtate lies, ſhall be valid and effectual to all intents and purpoſes.

Executions to iſſue on perſons refuſing to pay charges on the diviſion of eſtates.

II. *And be it further enacted by the authority aforeſaid,* That when partition ſhall be made as aforeſaid, if any one or more of the intereſted parties applying, ſhall neglect or refuſe to pay their juſt proportion of the charges which may attend ſuch diviſion, it ſhall and may be lawful for the ſaid Court who ordered the partition, to iſſue an execution againſt the delinquent or delinquents intereſted,

and

and applying as aforeſaid; provided an account of ſuch charge be firſt laid before the ſaid Court who ordered the partition, and the juſt proportions of the perſons intereſted, ſettled and allowed, they having been duly notified to be preſent at ſuch ſettlement and allowance. And when any meſſuage, tract of land, or other real eſtate ſhall be of greater value than either party's purpart or ſhare in the eſtate to be divided, and cannot at the ſame time be ſubdivided, and part thereof aſſigned to one, and part to another, without great inconvenience, the ſame may be ſettled or aſſigned to one of the parties, ſuch party to whom the ſame ſhall be ſo aſſigned, paying ſuch ſum or ſums of money to ſuch party or parties as by means thereof have leſs than their ſhare of the real eſtate, as the committee appointed to make partition ſhall award.

III. *And be it further enacted*, That neither of the ſaid Courts ſhall proceed to order ſuch partition, until it ſhall appear to them reſpectively, that the ſeveral perſons intereſted in ſuch eſtate, and living within the State, or the attornies of ſuch as are abſent, and have attornies reſiding in the State, have been duly notified of ſuch petition (by being perſonally ſerved with a copy thereof, or a copy left at their dwelling-houſe, or laſt place of abode, or that the ſubſtance of the petition ſhall have been inſerted three weeks ſucceſſively, in one or more of the publick news-papers) and have had opportunity to make their exception to the granting the ſame. Said Courts to notify perſons concerned, before eſtates be divided.

Provided nevertheleſs, That before partition be made, where any infants, perſons *non compos mentis*, or otherways incapacitated to take care of their eſtates are intereſted, guardians ſhall be appointed for all ſuch perſons according to law, if they live within this State, and if any perſon or perſons intereſted in any ſuch eſtate happen (at the time when ſuch application ſhall be made) to have been beyond ſea, or out of this State for the ſpace of one year, and not returned, and having no ſufficient attorney within the ſame, in ſuch caſe the ſaid Court to whom application ſhall be made for partition, ſhall appoint ſome diſcreet and diſintereſted perſon or perſons, as agent or agents for ſuch abſent party or parties, to be adviſing on his or their behalf in making ſuch partition; and due notice ſhall be given by the committee to all concerned (that are known and within the State) before ſuch partition be made, that ſo they may be preſent (if they ſee meet) at the time of making the ſame. *Provided alſo*, That no partition be made where any partner ſhall be beyond ſea, and ſhall not have been abſent twelve months, and ſhall be expected to return within ſix months. Proviſo.

Provided alſo, That if any partner ſhall have a larger ſhare ſet off than is ſuch partner's true and real intereſt, or if any ſhare ſet off ſhould be more than equal in value to the proportion it was ſet off for, then and in every ſuch caſe, upon complaint (to the Court which cauſed ſuch partition to be made) within three years of the making thereof, by any aggrieved partner or partners, who at the time of making ſuch partition were out of the State, and not notified thereof as aforeſaid ſeaſonably to be preſent at the ſame, the ſaid Court ſhall cauſe partition thereof to made a-new. And in Proviſo.

ſuch

ſuch new partition ſo much and no more ſhall be taken off from any ſhare, as ſuch ſhare ſhall be adjudged, more than the proportion of the whole it was deſigned for, eſtimating ſuch lands or real eſtate as in the ſtate they were in when firſt divided; and in caſe any improvements ſhall be made on the part that may by ſuch new partition be taken off as aforeſaid, the partner who made ſuch improvements ſhall have reaſonable ſatisfaction made him by the partner or partners to whoſe ſhare the ſame ſhall be added, by the eſtimation of the freeholders employed in making ſuch new partition, or the major part of them. And the Juſtices of the ſame Court who ordered partition, are alſo empowered to iſſue execution for ſuch ſatisfaction, and for coſts in ſuch new partition, the ſame being firſt taxed and allowed in the ſaid Court.

[This act paſſed *March* 11, 1784.]

An Act in Addition to the Act for the more eaſy Partition of Real Eſtate, paſſed *March* 11, 1784.

Preamble.

WHEREAS no proviſion is made by ſaid act, for determining the material facts ſet forth in the petition, for partition, in caſe the ſame are controverted by any of the tenants in common:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That when the facts alledged in any petition for partition, hereafter to be preferred, in conſequence of the ſaid act, are controverted, by any of the tenants in common, the anſwer or objection to the petition, ſhall be made in writing, in the form of a plea, to which the petitioner may reply, or demur, to the end the matter in diſpute may be reduced to an iſſue in law, or fact, and receive a determination by the Court or a Jury, in the manner other iſſues are determined: And in caſe the iſſue be determined in favour of the petitioner, judgment ſhall be entered up by the Court, that partition be made by diſintereſted freeholders, as the ſaid law directs, and proceed to appoint them accordingly: And alſo that the petitioner recover againſt the adverſe party, the coſt attending the trial, and may iſſue execution for ſaid coſts, in the form preſcribed by law, as in other caſes. But if on ſuch pleading, it be determined that the petitioner holds a leſs ſhare or proportion in common and undivided, than he has in his petition alledged, the adverſe party ſhall recover againſt the petitioner his reaſonable coſt; notwithſtanding judgment may be rendered in favour of the petitioner, to have an aſſignment of ſuch part of the real eſtate in ſeveralty, as he, *in fact*, holds in common and undivided.

Manner of determining facts alledged in any petition for partition, in caſe the ſame are controverted.

Mode of entering up judgment

II. *And be it further enacted by the authority aforeſaid,* That either party may appeal from the judgment of the Court of Common Pleas, *that partition ſhall be made*, to the Supreme Judicial Court, before the appointment of freeholders to make partition: But if no appeal is made until after the return of the freeholders, and the judgment of the Court thereon, the judgment, *that partition*

Either party may appeal.

tion ſhall be made, ſhall not by ſuch appeal, be again called in queſtion. And the Supreme Judicial Court, ſhall, upon the complaint of the appellee, (in caſe the appellant ſhall fail to enter, or proſecute his appeal) affirm the former judgment, and cauſe ſuch other proceedings to be had thereon, as to have partition compleated in the ſame way and manner as if the proceedings had been originally commenced in the Court.

Trial of the fact by a Jury, how determined.

Provided always, That the trial of the fact, by a Jury, whether the petitioner holds in common, in the ſame proportion he alledges in his petition, or in an leſſer proportion, ſhall be determined in the county where the lands lie, unleſs the parties ſhall expreſsly agree to the contrary; in which caſe, the trial by Jury may be had in ſuch county as the parties agree upon.

Rule and regulations reſpecting an appeal.

III. *And be it further enacted by the authority aforeſaid*, That in all *actions of partition* that ſhall be hereafter commenced, the ſame rule and regulations ſhall take place, with reſpect to an appeal from an interlocatory judgment of the Court of Common Pleas, *that partition ſhall be made*, as is herein before preſcribed, upon the like judgment upon a petition for partition; any former law, uſage or cuſtom to the contrary notwithſtanding.

[This act paſſed *February* 14, 1787.]

An Act for the better managing Lands, Wharves, and other Real Eſtate, lying in Common.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when and ſo often as any five or a major part of the proprietors of lands, wharves, or other real eſtate lying in common in any part of this Commonwealth, ſhall judge a proprietors meeting to be neceſſary, they may make a written application to a Juſtice of the Peace through the Commonwealth, or to a Juſtice of the Peace within the county where ſuch eſtate lies, for a warrant for the calling of a meeting, expreſſing the time, place and occaſion thereof; and ſuch Juſtice is hereby empowered to grant a warrant for ſuch meeting accordingly, directed to one of the proprietors aſking the ſame, or to the proprietors clerk, requiring him to notify the proprietors of the meeting, and the time, place, and occaſion of the ſame; which notification, in caſe ſuch undivided eſtate lies in any incorporated town, ſhall be given in writing and poſted up in ſome publick place or places within ſuch town, fourteen days at leaſt before the day appointed for the meeting, and for the like time (at leaſt) before ſuch meeting, ſhall be advertiſed in one of the *Boſton* weekly news-papers, and in one of the news-papers (if ſuch there be) printed in the county wherein ſuch real eſtate lies; or in caſe ſuch undivided eſtate doth not, or ſhall not lie within any incorporated town, ſuch written notification ſhall be given by advertiſing the ſame in any two of the ſaid *Boſton* news-papers, and in one other news-paper (if

How meetings are called.

Fourteen days notice for a meeting.

(if ſuch there be) printed out of *Boſton*, in the county where ſuch eſtate lies, at leaſt four weeks ſucceſſively before ſuch meeting; or ſuch meetings may be otherwiſe warned by poſting up written notifications in ſome publick place in each and every town and plantation where any one or more of the ſaid proprietors may reſide, fourteen days at leaſt before the time appointed for holding ſuch meeting; and ſuch and ſo many of the proprietors as ſhall aſſemble perſonally, or by their attornies, and meet accordingly, ſhall have power by a major vote to chooſe a moderator, a clerk, a treaſurer, a collector or collectors of taxes, a committee or committees, and any other needful officers to manage their affairs: which clerk ſhall enter and record all votes and orders that from time to time ſhall be made and paſſed in the proprietors meetings, who ſhall be ſworn to the faithful diſcharge of his office; and to agree upon and appoint any other way or method of calling and ſummoning meetings for the future, that ſhall be moſt ſuitable and convenient to the proprietors; as alſo to paſs votes or orders for the ſettling, or encouraging the ſettling, managing, improving, or dividing ſuch common lands, wharves, or other real eſtate, not before ſevered and divided; and to annex penalties to the breach and non-obſervance of ſuch orders; *Provided*, ſuch penalty doth not exceed *fifteen ſhillings* for one offence: *Provided alſo*, That ſuch orders ſo made with penalties annexed to them, be allowed and approved by the Court of General Seſſions of the Peace for the county where ſuch land or eſtate lies, and be not repugnant to the general laws of this Commonwealth; in which caſe ſuch orders ſhall have ſuch force and effect as that ſuch proprietors, by their treaſurer, agent or agents, may recover the penalty thereto annexed againſt the breakers or non-obſervers thereof, in any Court proper to try the ſame; ſuch penalty to be diſpoſed of as the proprietors ſhall direct: And the votes ſhall always be collected and numbered according to the intereſt of the proprietors preſent where the ſame is known. And no other affair ſhall be acted on at any meeting of the proprietors, than what is expreſſed in the warrant or notification for ſuch meeting.

To chooſe a moderator, &c.

Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That the moderator choſen at any ſuch meeting ſhall be thereby empowered to manage and regulate the buſineſs of that meeting: And where it ſhall ſo happen that any matter remains doubtful after a vote, the moderator is hereby directed and required to cauſe the ſame to be decided by the poll, if any one or more deſire it; ſuch polls to be numbered according to their intereſt.

Moderator empowered.

III. *And be it further enacted by the authority aforeſaid*, That no perſon ſhall have right to ſpeak before leave firſt obtained from the moderator, nor when any other is orderly ſpeaking, and that all perſons be ſilent at the order of the moderator, under the penalty and forfeiture of *five ſhillings* for the breach of every ſuch order; and if any perſon being by the moderator notified of ſuch offence, ſhall ſtill perſiſt in the ſame, then the moderator may order ſuch perſon to withdraw from the ſaid meeting; and ſuch offender upon his refuſal to do ſo, ſhall forfeit and pay the ſum of *twenty ſhillings*:

No perſons to ſpeak without leave.

Penalty.

lings: The reſpective forfeitures to be recovered by the clerk of ſuch proprietors, before any one of the Juſtices of the Peace for the county wherein ſuch land or other eſtate lies, or ſuch clerk lives, to be diſpoſed of, the one half for the uſe of the propriety, the other half to the ſaid clerk: And for the better enabling ſuch proprietors, and all perſons, towns, villages, truſtees for ſchools and others (holding or claiming by any lawful title) to maintain, recover and defend their reſpective grants, lands, intereſts and eſtates: How recoverable.

IV. *Be it enacted by the authority aforeſaid,* That it ſhall and may be lawful for all and every the ſaid perſons, towns, villages, precincts, pariſhes, truſtees for ſchools, and proprietors in common and undivided lands, grants and other real eſtates or intereſts whatſoever, to ſue, commence and proſecute any ſuits or actions in any Court proper to try the ſame, either by themſelves or their agents or attornies, and in like manner to defend all ſuch ſuits and actions, as ſhall be commenced againſt them or any of them; and at a legal meeting to chooſe ſuch agents or attornies, to proſecute for, or defend them; ſuch choice being certified by the clerk of ſuch town, village, precincts, pariſhes, truſtees or proprietors, or by ſuch other perſon as they ſhall reſpectively appoint. Perſons, towns, &c. to ſue or defend in any Court.

V. *Be it further enacted by the authority aforeſaid,* That it ſhall and may be lawful to and for the proprietors of any common and undivided lands, or other real eſtate, or the major part of them, according to the intereſt of the proprietors preſent, by themſelves or their lawful attornies, at any legal meeting, to vote, grant, or order the raiſing of any ſuitable ſum or ſums of money that ſhall by them be thought ſufficient for bringing forward, compleating the ſettlement of, or managing or improving ſuch lands and eſtate; and to carry on and proſecute, or defend any actions or ſuits that may be brought by or againſt them, or for carrying on, managing, or affecting any other affair for the common good of ſuch proprietors; and to levy and apportion ſuch ſum or ſums (raiſed for the ends and uſes aforeſaid) upon the proprietors ſeveral rights in ſuch common and undivided lands or eſtates, equally, and rateably according to their ſeveral intereſts therein. And every proprietor who ſhall neglect to pay to the collector, or treaſurer, or committee of ſuch propriety, his proportion of ſuch ſum or ſums of money, as have been, or from time to time ſhall be duly granted and voted to be raiſed and levied upon the proprietors rights and ſhares in ſuch lands and eſtate, for the ſpace of ſix months with reſpect to thoſe who live within this Commonwealth, and twelve months with reſpect to thoſe who live out of it, after ſuch grant, and his or their proportion thereof, ſhall have been poſted and publiſhed in the ſeveral news-papers as in the caſe of notifications as aforeſaid; then the committee of the proprietors, or the major part of ſuch committee, may, and are hereby fully empowered from time to time, at a publick vendue, to ſell and convey away ſo much of ſuch delinquent proprietors right or ſhare in ſuch common land or eſtate, as will be ſufficient to pay and ſatisfy his tax or proportion of ſuch grant, and all reaſonable charges attending ſuch ſale, to any perſon that will give moſt for the ſame; notice of ſuch ſale and of the time and place thereof being given by poſting Proprietors of common lands empowered to raiſe money. Proprietors neglecting to pay.

(if ſuch there be) printed out of *Boſton*, in the county where ſuch eſtate lies, at leaſt four weeks ſucceſſively before ſuch meeting; or ſuch meetings may be otherwiſe warned by poſting up written notifications in ſome publick place in each and every town and plantation where any one or more of the ſaid proprietors may reſide, fourteen days at leaſt before the time appointed for holding ſuch meeting; and ſuch and ſo many of the proprietors as ſhall aſſemble perſonally, or by their attornies, and meet accordingly, ſhall have power by a major vote to chooſe a moderator, a clerk, a treaſurer, a collector or collectors of taxes, a committee or committees, and any other needful officers to manage their affairs: which clerk ſhall enter and record all votes and orders that from time to time ſhall be made and paſſed in the proprietors meetings, who ſhall be ſworn to the faithful diſcharge of his office; and to agree upon and appoint any other way or method of calling and ſummoning meetings for the future, that ſhall be moſt ſuitable and convenient to the proprietors; as alſo to paſs votes or orders for the ſettling, or encouraging the ſettling, managing, improving, or dividing ſuch common lands, wharves, or other real eſtate, not before ſevered and divided; and to annex penalties to the breach and non-obſervance of ſuch orders; *Provided*, ſuch penalty doth not exceed *fifteen ſhillings* for one offence: *Provided alſo*, That ſuch orders ſo made with penalties annexed to them, be allowed and approved by the Court of General Seſſions of the Peace for the county where ſuch land or eſtate lies, and be not repugnant to the general laws of this Commonwealth; in which caſe ſuch orders ſhall have ſuch force and effect as that ſuch proprietors, by their treaſurer, agent or agents, may recover the penalty thereto annexed againſt the breakers or non-obſervers thereof, in any Court proper to try the ſame; ſuch penalty to be diſpoſed of as the proprietors ſhall direct: And the votes ſhall always be collected and numbered according to the intereſt of the proprietors preſent where the ſame is known. And no other affair ſhall be acted on at any meeting of the proprietors, than what is expreſſed in the warrant or notification for ſuch meeting.

To chooſe a moderator, &c.

Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That the moderator choſen at any ſuch meeting ſhall be thereby empowered to manage and regulate the buſineſs of that meeting: And where it ſhall ſo happen that any matter remains doubtful after a vote, the moderator is hereby directed and required to cauſe the ſame to be decided by the poll, if any one or more deſire it; ſuch polls to be numbered according to their intereſt.

Moderator empowered.

III. *And be it further enacted by the authority aforeſaid*, That no perſon ſhall have right to ſpeak before leave firſt obtained from the moderator, nor when any other is orderly ſpeaking, and that all perſons be ſilent at the order of the moderator, under the penalty and forfeiture of *five ſhillings* for the breach of every ſuch order; and if any perſon being by the moderator notified of ſuch offence, ſhall ſtill perſiſt in the ſame, then the moderator may order ſuch perſon to withdraw from the ſaid meeting; and ſuch offender upon his refuſal to do ſo, ſhall forfeit and pay the ſum of *twenty ſhillings*:

No perſons to ſpeak without leave.

Penalty.

lings: The reſpective forfeitures to be recovered by the clerk of ſuch proprietors, before any one of the Juſtices of the Peace for the county wherein ſuch land or other eſtate lies, or ſuch clerk lives, to be diſpoſed of, the one half for the uſe of the propriety, the other half to the ſaid clerk: And for the better enabling ſuch proprietors, and all perſons, towns, villages, truſtees for ſchools and others (holding or claiming by any lawful title) to maintain, recover and defend their reſpective grants, lands, intereſts and eſtates: How recoverable.

IV. *Be it enacted by the authority aforeſaid,* That it ſhall and may be lawful for all and every the ſaid perſons, towns, villages, precincts, pariſhes, truſtees for ſchools, and proprietors in common and undivided lands, grants and other real eſtates or intereſts whatſoever, to ſue, commence and proſecute any ſuits or actions in any Court proper to try the ſame, either by themſelves or their agents or attornies, and in like manner to defend all ſuch ſuits and actions, as ſhall be commenced againſt them or any of them; and at a legal meeting to chooſe ſuch agents or attornies, to proſecute for, or defend them; ſuch choice being certified by the clerk of ſuch town, village, precincts, pariſhes, truſtees or proprietors, or by ſuch other perſon as they ſhall reſpectively appoint. Perſons, towns, &c. to ſue or defend in any Court.

V. *Be it further enacted by the authority aforeſaid,* That it ſhall and may be lawful to and for the proprietors of any common and undivided lands, or other real eſtate, or the major part of them, according to the intereſt of the proprietors preſent, by themſelves or their lawful attornies, at any legal meeting, to vote, grant, or order the raiſing of any ſuitable ſum or ſums of money that ſhall by them be thought ſufficient for bringing forward, compleating the ſettlement of, or managing or improving ſuch lands and eſtate; and to carry on and proſecute, or defend any actions or ſuits that may be brought by or againſt them, or for carrying on, managing, or affecting any other affair for the common good of ſuch proprietors; and to levy and apportion ſuch ſum or ſums (raiſed for the ends and uſes aforeſaid) upon the proprietors ſeveral rights in ſuch common and undivided lands or eſtates, equally, and rateably according to their ſeveral intereſts therein. And every proprietor who ſhall neglect to pay to the collector, or treaſurer, or committee of ſuch propriety, his proportion of ſuch ſum or ſums of money, as have been, or from time to time ſhall be duly granted and voted to be raiſed and levied upon the proprietors rights and ſhares in ſuch lands and eſtate, for the ſpace of ſix months with reſpect to thoſe who live within this Commonwealth, and twelve months with reſpect to thoſe who live out of it, after ſuch grant, and his or their proportion thereof, ſhall have been poſted and publiſhed in the ſeveral news-papers as in the caſe of notifications as aforeſaid; then the committee of the proprietors, or the major part of ſuch committee, may, and are hereby fully empowered from time to time, at a publick vendue, to ſell and convey away ſo much of ſuch delinquent proprietors right or ſhare in ſuch common land or eſtate, as will be ſufficient to pay and ſatisfy his tax or proportion of ſuch grant, and all reaſonable charges attending ſuch ſale, to any perſon that will give moſt for the ſame; notice of ſuch ſale and of the time and place thereof being given by poſting Proprietors of common lands empowered to raiſe money. Proprietors neglecting to pay.

poſting as aforeſaid, and publiſhing the ſame in at leaſt two of the news-papers aforeſaid, five weeks ſucceſſively before the time of ſuch ſale; and may execute a good deed or deeds of conveyance of the lands or eſtate ſo ſold unto the purchaſer thereof to hold in fee ſimple. *Provided nevertheleſs*, That the proprietor or proprietors whoſe right or ſhare ſhall be ſo ſold, ſhall have liberty to redeem the ſame at any time within twelve months after ſuch ſale, by paying the ſum ſuch right or ſhare ſold for, and charges, together with the further ſum of *twelve pounds* for each *hundred pounds* produced by ſuch ſale, and ſo *pro rata* for any leſs or greater ſum.

Proviſo.

VI. *And be it further enacted by the authority aforeſaid*, That when it ſhall happen that ſuit ſhall be brought againſt any towns, precincts, pariſhes or villages, or againſt the proprietors of any common or undivided lands or other eſtate, the plaintiff bringing forward ſuch ſuit ſhall cauſe the clerk of ſuch towns, villages, precincts or proprietors, or one or more of the principal inhabitants or proprietors reſpectively, to be ſerved with a copy of the writ or ſummons, at leaſt thirty days before the day of the ſitting of the Court to which the ſame ſhall be returnable.

Writs to be ſerved on towns, proprietors, &c. thirty days before the Court.

VII. *And it be further enacted by the authority aforeſaid*, That the treaſurer, aſſeſſors, collector or collectors, which at any time may be choſen by the proprietors of any common and undivided lands or other real eſtate, ſhall be ſworn before a Juſtice of the Peace to the faithful diſcharge of their reſpective truſts; and in caſe no Juſtice of the Peace ſhall be preſent at the meeting of ſuch proprietors, then any, or all the officers directed to be ſworn by this act may be ſworn by the moderator; and ſuch treaſurer is hereby empowered to demand, ſue for, recover, and receive all ſuch ſums of money, debts and dues, as ſhall at any time belong to the ſaid proprietors, or be any ways due or coming to them, and make payment thereof according as he ſhall be lawfully ordered and directed by the proprietors, and render his reaſonable account thereof on demand; and ſuch treaſurer ſhall continue in his office until the proprietors ſhall ſee cauſe to chooſe another.

Treaſurer, aſſeſſors, &c. to be ſworn.

Treaſurer empowered to ſue for and recover money.

VIII. *And be it further enacted by the authority aforeſaid*, That the proprietors of ſuch undivided land or eſtate where the ſame hath been heretofore ſtated, and each one's proportion known, ſhall be, and hereby are empowered to order, manage, improve, divide, or diſpoſe of the ſame in ſuch way and manner as ſhall be concluded and agreed upon by the major part of the intereſted preſent at any legal meeting, the votes to be collected and accounted according to the intereſts. And any proprietor may vote as well by attorney ſpecially appointed for that purpoſe, as in perſon: And the proprietors of all ſuch undivided lands and eſtate not ſtated, nor the proportions known as aforeſaid, ſhall be, and hereby are empowered to order, manage, improve, divide or diſpoſe of the ſame as hath been or ſhall be concluded and agreed on by the major part in number of ſuch proprietors preſent at any ſuch meeting. *Provided always*, That the meetings of proprietors that may be notified, or which may hereafter be held by adjournment or adjournments agreeable to former laws, ſhall not be affected by the paſſing this act:

Proprietors empowered to order manage, &c. each one's proportion of land.

act: But ſuch meetings and the tranſactions regularly made thereat, ſhall be as valid to every intent and purpoſe as though this act had never been made.

Preamble. And whereas it is needful that proviſion be made for the preſervation and ſafe keeping of the records of ſuch proprietors, after they have made a full and compleat diviſion of their lands, or other real eſtate lying in common and undivided, and reduced the ſame to ſeveralty:

The laſt clerk to continue to execute the office to which he was elected, the final diviſion of lands and eſtate notwithſtanding. IX. *Be it further enacted by the authority aforeſaid*, That the laſt clerk choſen by the proprietors of any common and undivided land, or other real eſtate in this Commonwealth, who are or have been, or may hereafter be empowered by law to hold meetings, chooſe a clerk and other officers, ſhall continue to execute the office of clerk to which he was appointed, notwithſtanding the final and total diviſion of ſuch lands and eſtate, as fully, to all intents, conſtructions and purpoſes whatſoever, as though there had been no ſuch diviſion made, and until the ſame records ſhall be lodged with the clerk of the town in which the land lies; and when the lands lie in ſeveral towns, they may be lodged with the clerk of ſuch town, as the Court of Seſſions, upon application to them made for that purpoſe, ſhall order and direct; and the clerk with whom they may be lodged, and his ſucceſſors in office, ſhall be fully authorized to authenticate any copies therefrom, as from the records of the town of which he is clerk.

[This act paſſed *March* 10, 1784.]

An Act to prevent Tenants in Common, joint Tenants and Coparceners, from committing Waſte, and for making Partition of their Intereſts, and alſo directing how joint Tenancies ſhall be created.

Penalty for cutting down or deſtroying any trees, &c. *BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any perſon holding any lands in common and undivided, ſhall cut down, deſtroy or carry away any trees, timber, wood or underwood whatſoever, ſtanding or lying on ſuch lands, or ſhall dig up or carry off any ſtone or oar, or any other valuable matter, or make any other ſtrip or waſte thereon, without firſt giving notice in writing under his or their hands, unto all the perſons intereſted therein, or to their agents, factors or attornies, forty days before hand, ſetting forth that he or they have occaſion for, and ſhall enter upon and improve ſuch lot or lots of land lying in common as aforeſaid, he ſhall forfeit and pay the ſum of *forty ſhillings* for every tree meaſuring one foot diameter, at the diſtance of two feet from the ground, and for all trees of greater dimenſions three times the value thereof, beſides *forty ſhillings* as aforeſaid, and *twenty ſhillings* for every tree or pole under the dimenſions of one foot diameter, and for other wood or underwood ſo cut down, deſtroyed or carried away,

away, treble the value thereof, and treble damages for any other ſtrip or waſte. The ſaid forfeitures may be recovered by any one or more of the perſons intereſted in the ſame lands who may proſecute and ſue for the ſame in an action of treſpaſs in his or their own names, as well on the behalf of the other co-tenants, except the defendant, without being held to name them in the writ, as of him or themſelves, one moiety of the aforeſaid penalties to be for the uſe of ſuch perſon or perſons who ſhall ſue for the ſame, and the other to and for the uſe of all the co-tenants, excepting the defendant, in proportion to their reſpective intereſt in the land where the treſpaſs hath been committed.

How recovered.

II. *And be it further enacted by the authority aforeſaid*, That all perſons having or holding, or that hereafter ſhall have or hold any lands, tenements or hereditaments, as tenants in common, joint tenants or coparceners, may be compelled by writ of partition at the common law, to divide the ſame. And when any writ ſhall be brought and ſerved at the ſuit of any one or more perſons ſo intereſted in any lot or lots of land, tenements or hereditaments, or a petition ſhall be pending in Court for a partition of the ſame, no perſon or perſons whatſoever having a right or intereſt in any ſuch lands, tenements or hereditaments, or holding any part or ſhare of the ſame in common as aforeſaid, while ſuch ſuit or petition is depending, ſhall or may cut down, deſtroy or carry away any trees, timber, wood or underwood, ſtone or oar or other valuable matter whatſoever, ſtanding, growing or lying on or belonging to ſuch lands, or ſhall otherwiſe hurt or damage any ſuch lands, tenements or hereditaments, until partition can be made of the ſame according to law, on pain that every perſon or perſons ſo offending ſhall incur the like forfeitures and penalties as are before in this act mentioned, to be recovered in like manner as beforenamed; and for ſuch uſes as are before-mentioned and declared.

Perſons holding lands, &c. as tenants in common, may be compelled to divide the ſame.

Penalty for committing waſte, before partition can be made.

And to prevent any doubts reſpecting the manner heirs are to proſecute in the Courts of law, for poſſeſſion of inheritance deſcended to them from a common anceſtor:

III. *Be it further enacted by the authority aforeſaid*, That in actions of waſte, ejectment, or other real actions, where poſſeſſion of the inheritance alledged to have deſcended is the object of the ſuit, they may all, or any two or more of them join therein, or each one may proſecute for his particular ſhare of ſuch inheritance, and the ſame rule ſhall extend to joint tenants who are or may be diſſeized.

Manner heirs are to proſecute for poſſeſſion of inheritance.

And whereas it often happens that eſtates in joint tenancy, are created againſt the intentions of the parties to gifts, grants, feoffments and other conveyances, and alſo of teſtators, through the want of the knowledge of the proper terms to create eſtates in common, and the latter eſtates are more beneficial to the Commonwealth, and conſonant to the genius of Republicks:

IV. *Be it further enacted by the authority aforeſaid*, That all gifts, grants, feoffments, deviſes, and other conveyances, of any lands, tenements, and hereditaments, which have been, or ſhall be made to two or more perſons, whether for years, for life, in tail or in fee, ſhall be taken, deemed and adjudged, to be eſtates in common,

How gifts, grants and other conveyances of lands &c. made to two or more perſons, ſhall be taken, deemed and adjudged.

mon, and not in joint tenancy, unleſs it has been or ſhall be therein ſaid, that the grantees, feoffees or deviſees, ſhall have or hold the ſame lands, tenements or hereditaments jointly, or as joint-tenants, or in joint tenancy, or to them and the ſurvivor or ſurvivors of them, or unleſs other words be therein uſed, clearly and manifeſtly ſhowing it to be the intention of the parties to ſuch gifts, grants, feoffments, deviſes or other conveyances, that ſuch lands, tenements and hereditaments ſhould veſt, and be held as joint eſtates, and not as eſtates in common.

Proviſo.

Provided nevertheleſs, where any eſtate has already veſted in the ſurvivor or ſurvivors, upon the principle of joint-tenancy, it ſhall be held in like manner, as it would have been held if this act had never been paſſed; any thing therein to the contrary notwithſtanding.

Former act repealed, &c.

V. *And be it further enacted by the authority aforeſaid*, That the act entitled, "An act to prevent coparceners, joint-tenants and tenants in common, from commiting waſte, and for making partition of their intereſt; and for aboliſhing the principle of ſurvivorſhip in joint-tenancy," paſſed *March* ſixteenth, one thouſand ſeven hundred and eighty-four, be, and hereby is repealed.—This act to be in force from and after the firſt day of *June*, *Anno. Domini*, one thouſand ſeven hundred and eighty-ſix.

[This act paſſed *March* 9, 1786.]

An Act concerning general and common Fields.

Proprietors of general fields, &c. may meet together annually, to make & adopt rules and modes of improvement.

Proprietor of each lot to maintain his part of the whole fence, until, &c.

Juſtices of the Peace empowered to iſſue a warrant for a meeting.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That in any and every town or plantation in this Commonwealth where ſeveral allotments of land are encloſed and fenced in one general field, or where they have been ſo incloſed, fenced and improved, or where all the proprietors of any land ſhall hereafter ſee cauſe to encloſe, fence, and improve the ſame in ſuch manner, ſuch proprietors may, ſometime in *March* annually, and from time to time as they judge proper, meet together to make ſuch rules and adopt ſuch modes of improvement as they ſhall think juſt and equitable, and moſt for the general benefit; and the proprietor or proprietors of each lot reſpectively, during the time of his or their paſturing, planting, mowing, or otherwiſe improving his or their part in ſuch general field, ſhall make and maintain his or their reſpective part of the whole fence, according to the quantity of acres of land contained in his or their allotment, until the major part of the propriety, at a meeting of ſuch proprietors legally warned for that purpoſe, ſhall ſee cauſe to alter the form of their improvement. And for the better enabling ſuch proprietors to call a meeting for the ends aforeſaid, it ſhall be in the power of any Juſtice of the Peace for the county where ſuch lands lie, upon application to him made by any two of the proprietors of ſuch general fields, to iſſue out a warrant, for ſuch meeting: which warrant, and alſo the notification of the meeting, ſhall expreſs the buſineſs thereof and ſhall be

be conducted in the ſame manner as thoſe for calling a meeting of proprietors of common lands, preſcribed by "An act relating to lands, wharves and other real eſtate undivided and lying in common," paſſed *March* 10, 1784. And the whole general fence ſhall be meaſured, and each proprietor's part ſet out and apportioned by two or three diſcreet indifferent perſons appointed and ſworn for that purpoſe, by any Juſtice of the Peace for the ſaid county, unleſs the major part of the propriety agree and proportion the ſame among themſelves. And when the proportion of each proprietor in ſuch general fence is adjuſted and determined, the ſame ſhall be entered upon record by the Clerk of the propriety; and where there is no ſuch Clerk, by the Clerk of the town wherein the land lies, any law, uſage or cuſtom to the contrary notwithſtanding.

The whole general fence ſhall be meaſured, & each proprietor's part apportioned.

II. *And be it further enacted by the authority aforeſaid*, That the charge ariſing by dividing and ſetting off the ſeveral parts of ſuch fence to and among the proprietors of lands encloſed and fenced in one general field, and alſo the charge of making and maintaining of ſuch fence as cannot juſtly be ſet off to any particular proprietor or proprietors, as his or their part, ſhall be borne by the ſeveral proprietors in proportion to their reſpective intereſts in ſuch field.

Charges of dividing, &c. how borne.

III. *And be it further enacted by the authority aforeſaid*, That the proprietors of ſuch general fields reſpectively ſhall be and are hereby fully authorized and empowered in a proprietors meeting for that purpoſe regularly convened, by a major vote of the proprietors then preſent (the vote to be collected according to the intereſt of the proprietors) to agree upon and paſs one or more votes for the raiſing and collecting ſuch ſum or ſums of money from time to time as they ſhall judge neceſſary for defraying the charges aforeſaid, and for carrying on, or managing any common affairs relating to ſuch proprietors; and that they be alike empowered to chooſe three or five aſſeſſors for the aſſeſſing and apportioning ſuch ſum or ſums ſo agreed on and voted upon the proprietors of ſuch fields, according to their ſeveral intereſts therein; and to appoint a collector or collectors to gather in and collect the ſame; which collector or collectors ſhall be, and are hereby fully empowered to levy and collect the ſum or ſums ſo ſet and apportioned for ſuch proprietors to pay, in the ſame manner as conſtables of towns within this Commonwealth are empowered to levy and collect the publick rates or taxes; and to pay in the ſame to the proprietors or their clerk, who is hereby empowered to grant warrants, for the levying and collecting ſuch aſſeſſment at ſuch time as ſhall be by them appointed for the payment thereof; and ſuch clerk ſhall be accountable to the proprietors therefor: the perſon or perſons ſo aſſeſſing the ſaid proprietors, and the collector or collectors, that ſhall be ſo appointed for the gathering and collecting the ſum or ſums ſo granted and agreed upon by the ſaid proprietors to be aſſeſſed and collected as aforeſaid, ſhall be under oath for the true and faithful performance of their ſervices reſpectively; which oath ſhall be adminiſtered to them as the law provides for ſwearing town officers.

Proprietors empowered to raiſe ſuch ſums of money as they ſhall judge neceſſary.

To chooſe aſſeſſors and collectors.

Proprietors clerk empowered to grant warrants for levying and collecting aſſeſſments.

Aſſeſſors and collectors to be under oath.

Provided

Provided nevertheleſs, That any ſuch proprietor who apprehends himſelf aggrieved, or over rated in the making or apportioning ſuch aſſeſſment, ſhall have liberty to apply to the Juſtices of the General Seſſions of the Peace in the reſpective counties where ſuch fields lie, for relief; and in ſuch caſe the ſaid Juſtices are hereby fully empowered to grant relief accordingly; and their judgment ſhall be final.

Proprietors aggrieved or over-rated, at liberty to apply for relief to the Court of Seſſions.

IV. *And be it further enacted by the authority aforeſaid*, That the proprietors aforeſaid, or the major part of ſuch of them as ſhall be preſent at a meeting legally warned for that purpoſe, may chooſe haywards or field drivers, who ſhall be under oath, and ſhall have the ſame powers as if they had been choſen by a town.

Haywards or field-drivers may be choſen.

V. *And be it further enacted*, That if any proprietor in any common or general field ſhall put, or cauſe to be put therein, any horſe, cattle, ſheep, or other creature, over and above the number allowed him, or before the day agreed upon; or keep them longer there than the time ſet and limited, by a major vote of the proprietors, he ſhall be deemed a treſpaſſer; and his creatures ſo put in ſhall be proceeded with by any of the proprietors as creatures taken damage faiſant, to all intents and purpoſes, as much as if he owned no land within ſuch general field.

Proprietors treſpaſſing, ſhall be proceeded with as if they owned no land in the field.

VI. *And be it further enacted by the authority aforeſaid*, That when and ſo often as any treſpaſs or treſpaſſes, ſhall be done in any common or general field by reaſon of the inſufficiency of the fence belonging to any perſon owning the adjoining land, the party or parties injured ſhall forthwith procure two ſufficient perſons of good repute to view and adjudge of the damage done, giving notice of ſuch treſpaſs to the owner or claimer of the horſe, cattle, ſheep or other creature that did the ſame (if he be known and reſident in the ſame town or near thereto) that he may be preſent, and nominate one of the appraiſers of ſuch damage, if he ſee cauſe: and the damage ſhall be anſwered according to ſuch appraiſement. And where damage happens through the inſufficiency of the fence, the owner or occupant of the land to which the defective fence belongs, ſhall be liable to anſwer and make good all ſuch damages.

Treſpaſſes done by reaſon of the inſufficiency of fences adjoining, damages ſhall be anſwered according to appraiſement.

VII. *And be it further enacted*, That each proprietor of lands lying unfenced, or in any common field, ſhall once in two years, on ſix or more days warning, previouſly given him by the proprietor or proprietors of the land next adjoining, run the lines, and make or keep up the boundaries between their reſpective lands by ſufficient mear-ſtones, on pain that every party ſo neglecting or refuſing, ſhall forfeit the ſum of *ten ſhillings* to the party moving, or requeſting to run the line; the conviction of ſuch neglect or refuſal, being had before any Juſtice of the Peace within the ſame county, who is hereby empowered to hear and determine the caſe.

Each proprietor ſhall once in two years run lines, &c.

Forfeiture for neglect.

VIII. *And be it further enacted*, That it ſhall and may be lawful to and for the proprietors who own the major part of the intereſt or property in any common or general field, at a legal meeting to be warned for that purpoſe, to diſſolve and diſcontinue ſuch field; ſix months being allowed to elapſe before ſuch diſcontinuation.

Proprietors may diſſolve and diſcontinue their general fields.

Proviſo.

IX. *Provided always, and be it further enacted,* That nothing contained in this act ſhall prevent or hinder the proprietors of any ſuch common field already fenced, from making and maintaining their fences according to rules and orders formerly agreed on by them at any meeting legally warned.

Votes to be collected & counted according to the intereſt of the proprietors preſent at meetings.

X. *And be it further enacted by the authority aforeſaid,* That at every meeting of ſuch proprietors, the votes ſhall by the moderator be collected and counted according to the intereſts of the proprietors preſent, where ſuch intereſts are known. And whereas it often happens that horſes, cattle, and other creatures are clandeſtinely turned into general fields, or being unruly break into the ſame in places where the fence is good and ſufficient according to law; and when in ſuch caſes proprietors of general fields impound horſes, cattle, or other creatures, the owners replevy them becauſe the fence encloſing the general field is deficient in ſome diſtant place from that where the horſes, cattle, or other creatures entered the ſame, and in conſideration of ſuch deficiency judgment is unreaſonably recovered againſt ſuch proprietors:

When horſes, cattle, &c. are clandeſtinely turned into any general field, & are impounded, and a writ of replevin is purchaſed by the owner, judgment may be given in favour of the proprietor of the field.

XI. *Be it therefore further enacted by the authority aforeſaid,* That whenever horſes, cattle, or other creatures, ſhall be clandeſtinely turned into any general field, or, being unruly, break into the ſame, and ſhall be taken and impounded by a proprietor thereof, and a writ of replevin ſhall be purchaſed by the owner of the horſes, cattle, or other creatures ſo impounded, for the purpoſe of replevying them, it ſhall be in the power of the Court or Juſtice before whom the action ſhall be brought, to give judgment in favour of the proprietor of the general field, upon his producing ſatisfactory evidence to the ſaid Court or Juſtice, that the horſes, cattle, or other creatures replevied as aforeſaid, were either clandeſtinely turned into the general field or broke into the ſame in a part thereof where the fence was good and ſufficient according to law, ſome other parts of the fence encloſing the general field being deficient notwithſtanding.

And whereas it often happens in fencing general fields, for the conveniency of fencing, conſiderable quantities of rocky and barren land not capable of tillage, are taken into ſuch fields, the owners of which may be obliged to make fence, and alſo pay taxes equally with the other proprietors whenever an aſſeſſment is made by the proprietors of ſuch field; which is very unjuſt:

Owners of rocky or barren lands, not obliged to make any part of the fence, &c

Not to be taxed until they make improvement.

XII. *Be it therefore further enacted,* That all lands now lying in general fields, or that hereafter may be taken into the ſame, that are ſo rocky or barren that the owners thereof have never improved them, either by mowing, plowing, or feeding, ſuch owners ſhall not be obliged to make, on account of ſuch lands, any part of the fence in compaſſing ſuch general fields; nor ſhall they be taxed for them in any rate or tax, raiſed by the proprietors of ſuch field, until they ſhall make improvement thereon.

And whereas the minor part of the owners or proprietors of common fields, in ſome inſtances, have been and may be deſirous of a partition of ſuch field into two or more diſtinct fields, from a perſuaſion that their ſhares or lots might (if ſeparated and fenced off from the reſt) be improved much more to their advantage in ſome

manner

manner different from that agreed on by the majority. To the end therefore that ſuch of the owners as are or may be ſo minded, may not be unreaſonably reſtrained by the reſt from having ſuch partition:

XIII. *Be it enacted by the authority aforeſaid*, That when any three or more of the owners or proprietors of lots in any common or general field lying within one general fence or encloſure, ſhall make application in writing under their hands to the proprietors of ſuch field (at any meeting legally warned for that purpoſe) to have the lots or ſhares of the owners or proprietors ſo applying, or theirs with other lots or ſhares (taken together) to make one entire field, to be ſeparated from the reſt by one common fence, and to be improved as a diſtinct and ſeparate, but common field; in ſuch caſe, if the proprietors who have the greater part of the intereſt among thoſe who are preſent at ſuch meeting, ſhall withhold, or refuſe their aſſent to ſuch diviſion or partition, it ſhall and may be lawful for the Juſtices of the Court of General Seſſions of the Peace for the ſaid county, upon application made to them, to appoint a committee of five freeholders within the ſaid county, (under oath) to make the partition prayed for, if it ſhall appear to ſuch committee to be expedient, and to aſſign to each field its part or proportion of the diviſional fence in conſequence of ſuch partition, to be made, kept up and maintained by the proprietors of the reſpective common fields; and the return being made under the hand of the major part of ſuch committee, and accepted by the ſaid Court of Seſſions, the fields ſo ſeparated ſhall be conſidered as diſtinct and ſeparate common fields, and the owners or proprietors of each field a diſtinct and ſeparate propriety, as fully to all intents and purpoſes whatſoever, as the owners or proprietors of ſuch general field were conſidered before ſuch partition was made. *Provided*, That no order for partition be made, or committee appointed, until the reſt of the proprietors have been duly notified of ſuch application, and opportunity given them to make their objections thereunto; which notice ſhall be given by ſerving the Clerk of ſuch proprietors with a copy of ſuch written application, thirty days at leaſt before ſuch order or appointment be made; and every committee that ſhall be appointed and employed as aforeſaid, ſhall make return of their doings in writing under their hands, unto the ſaid Court, as ſoon after as may be, for acceptance and confirmation: and the proprietors whoſe intereſt ſhall be ſo ſet off, as well as the remaining proprietors, ſhall have and enjoy all the powers and privileges which the proprietors of general fields are by law veſted with.

Manner of proceeding, when any three or more proprietors are deſirous of a partition into two or more fields.

Proviſo.

[This act paſſed *February* 24, 1786.]

An Act for regulating Fences.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That in every town and diſtrict within this government, there ſhall be choſen

Fence viewers to be choſen annually, &ſworn.

choſen annually by the inhabitants thereof, at the time of their meeting, for the choice of town officers, two or more judicious and diſcreet freeholders, being inhabitants of the ſame town or diſtrict, to be fence viewers, to be ſworn as other town officers are ſworn to the faithful diſcharge of the duties of their office, each of whom, in caſe of refuſal, after ſeven days notice, ſhall pay a fine of *thirty ſhillings*, and another perſon ſhall be forthwith choſen in his ſtead, the fine to be to the uſe of the ſame town or diſtrict.

In caſe of refuſal, penalty.

Fences of four feet high to be accounted legal and ſufficient.

II. *And be it further enacted by the authority aforeſaid*, That all fences of four feet high, and in good repair, conſiſting of rails, timber, boards or ſtone walls; and alſo brooks, rivers, ponds, creeks, ditches and hedges, or other matter or thing equivalent thereto, in the judgment of the fence viewers, within whoſe juriſdiction the ſame ſhall lie, ſhall be accounted legal and ſufficient fences; and the reſpective occupants of lands encloſed with fence, ſhall keep up and maintain partition fences between their and the next adjoining encloſures, in equal halves, ſo long as both parties continue to improve the ſame; and in caſe either party ſhall neglect or refuſe to repair or rebuild the fence which of right he ought to maintain, the aggrieved party may forthwith apply to two or more fence viewers of ſuch town, duly choſen and ſworn, to ſurvey the ſame; and upon their determination that the fence is inſufficient, they ſhall ſignify the ſame in writing to the occupant of the land, and direct him to repair or rebuild the ſame within ſix days; and if the ſame fence ſhall not be repaired or rebuilt within the ſaid term of ſix days, it ſhall be lawful for the complainant that improves the lands adjoining, to make up, amend or repair the deficiency; and when the ſame ſhall be compleated and adjudged ſufficient by two or more of the fence viewers, and the value thereof, together with the fence viewers fees aſcertained in writing, the complainant ſhall have a right to demand and receive of the occupant, leſſor or freeholder of the land where the fence was deficient as aforeſaid, at his election, double the ſum thus aſcertained as aforeſaid, for the expence of amending, ſurveying and viewing the fence; and in caſe of neglect or refuſal to make payment thereof, for the ſpace of one calendar month after demand made of the perſon againſt whom he ſhall make his election, he may ſue for and recover the ſame, by a ſpecial action of the caſe in any Court proper to try the ſame, and intereſt, *one per cent.* per month, until judgment ſhall be rendered therefor.

Partition fences to be maintained by the occupants in equal halves.

And in caſe.

Penalty for not repairing deficient fences.

How to be recovered.

When diſputes ariſe about the reſpective occupants right in partition fences.

To whom application is to made.

III. *And be it further enacted*, That when any diſpute ſhall ariſe about the reſpective occupants right in partition fences, and his or their obligation to maintain the ſame, upon application made by either party to two or more fence viewers of ſuch town where the lands lie, they are hereby empowered after due notice to each party, to attend at time and place, if they ſee cauſe, to aſſign to each party his ſhare thereof, in writing: which aſſignment being recorded in the town-clerk's office, ſhall be binding upon ſuch perſons, and the ſucceeding occupiers of the reſpective lands, and they obliged always thereafter to maintain their part of ſaid fence; and in caſe any of the parties ſhall refuſe, or neglect to erect, keep up and main-

And in caſe.

tain

tain the part to ſuch party aſſigned; the ſame may be done by the aggrieved party, in the manner before in this act provided, and for which he ſhall be entitled to double the ſum aſcertained, in manner as aforeſaid, and to be recovered in like manner. And all diviſional fences between man and man, ſhall be kept in good repair throughout the year, unleſs the occupiers of the lands on both ſides, ſhall otherwiſe agree.

When lands occupied by different perſons are bounded upon brooks, ponds, &c.

IV. *And be it further enacted by the authority aforeſaid*, That when lands belonging to, or occupied by different perſons, and ſubjected to be fenced, are bounded upon, or divided from each other by any brook, pond, or creek, which of itſelf is not a ſufficient fence in the judgment of the fence viewers, and it is in their opinion impracticable without unreaſonable expence for the partition fence to be made in the middle or other part thereof, being the true boundary line between them; if in ſuch caſe the occupant of the land on one ſide, ſhall refuſe or neglect to join with the occupant of the land on the other ſide, in making a partition fence on one ſide or the other, or ſhall diſagree reſpecting the ſame, then two or more fence viewers of the town or towns wherein ſuch lands lie, on application to them made, ſhall forthwith view ſuch brook, river, pond, or creek; and if they ſhall determine the ſame not to anſwer the purpoſe of a ſufficient fence, and that it is impracticable to fence at the true boundary line; they ſhall judge and determine how, or on which ſide thereof, the fence ſhall be ſet up and maintained, or whether partly on one ſide, and partly on the other ſide, as to them ſhall appear juſt, and reduce ſuch their determination to writing, having firſt given notice to the parties to be preſent at ſuch aſſignment: and if either of the parties ſhall refuſe or neglect to make up and maintain the part of the fence to ſuch party belonging, according to the fence viewers determination in writing as aforeſaid, the ſame may be done and performed, as in this act is before provided, and the delinquent party ſubject to the ſame coſts and charges, and to be recovered in like manner.

In ſuch caſes.

Where lands belonging to two perſons, have been improved without a partition fence, & one of the occupants ſhall be deſirous to improve his part in ſeveralty, the other occupant refuſing, the fence viewers to divide the ſame.

V. *And be it further enacted by the authority aforeſaid*, That where any lands belonging to two perſons in ſeveralty ſhall have been improved in common without a partition fence between them, and one of the occupants ſhall be deſirous to improve his part in ſeveralty, and the other occupant ſhall refuſe or neglect, on demand, to divide the line where the fence ought to be built, or to build a ſufficient fence on his part of the line when divided, it ſhall be in power of the party deſiring it, to have the ſame divided and aſſigned by two or more of the fence viewers of the ſame town, in the way and manner in this act provided; and the ſame fence viewers may in writing aſſign a reaſonable time, having regard to the ſeaſon of the year, for making up the fence; and if the occupant complained of ſhall not build and erect his part of the fence within the time ſo aſſigned, it ſhall and may be lawful for the other party, after having made up his own part of the fence, to make up the other's part, and recover therefor double the ſum it ſhall coſt, with the fees of the fence viewers, in the way and manner in this act before provided.

Parties ceaſing to improve their lands or ſhall lay incloſures in common, not to take away any part of the partition fence.

VI. *And be it further enacted,* That when one party ſhall ceaſe to improve his land, or ſhall lay his incloſure, before under improvement, in common, he ſhall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next incloſure that is improved: Provided the party continuing to improve will allow and pay therefor, ſo much as two or more fence viewers ſhall in writing determine the reaſonable value thereof.

Proviſo.

And whenever any lands which have laid unimproved and in common, ſhall be afterwards encloſed or improved by depaſturing, the occupant, leſſor or freeholder thereof, ſhall pay for the one half of each partition fence ſtanding upon the diviſional line between the ſame land and the land of the encloſures of any other occupant or proprietor; the value and part thereof to be aſcertained in writing, in caſe they ſhall not agree between themſelves, by two or more of the fence viewers of the ſame town wherein ſuch line lies; and in caſe ſuch occupant, leſſor, or proprietor as aforeſaid, ſhall neglect or refuſe to pay for a moiety of the partition fences, for the ſpace of thirty days after demand made, (the value having been aſcertained as aforeſaid) the proprietor of the fence may have and maintain in form aforeſaid, an action of the caſe for ſuch value and the coſts of aſcertaining the ſame. And in all caſes where the line upon which partition fence is to be made or divided, is the boundary line of one or more towns, or partly in one town and partly in another town, a fence viewer ſhall be taken from each town.

When partition fences are on the boundary lines of one or more towns, a fence viewer to be taken from each

When a water fence is neceſſary, it ſhall be done in equal halves.

VII. *And be it further enacted,* That when a water fence, or fence running into the water is neceſſary to be made, the ſame ſhall be done in equal halves, unleſs by the parties otherwiſe agreed: and in caſe either party ſhall refuſe or neglect to make or maintain the ſhare to ſuch party belonging, ſimilar proceedings ſhall be had, as in other caſes of the like kind reſpecting fences out of the water, in this act mentioned.

Proviſo.

Provided, That nothing in this act contained, ſhall extend to houſe lots, the contents of which do not exceed half an acre; but if the owner or owners of ſuch lots ſhall improve, his neighbour ſhall be compellable to make, and maintain one half of the ſaid fence between them, whether he improve or not; or to make void any written agreement reſpecting the making or maintaining partition fences.

Fence viewers neglecting their duty.

VIII. *And be it further enacted,* That any fence viewer duly choſen and ſworn, who on due notice given him, and being requeſted, by any perſon intereſted, to view any fence, complained of as inſufficient, ſhall neglect forthwith to attend the ſame, ſhall forfeit and pay the ſum of *twenty ſhillings*, to him or them who ſhall ſue for the ſame, within forty days after ſuch neglect; and each fence viewer ſhall be paid *five ſhillings* a day, *two ſhillings* and *eight pence* for half a day, and under that *one ſhilling* and *ſix pence*, for the time he ſhall be engaged in the buſineſs of his office, by the perſon employing him. And in caſe the complainant ſhall neglect to pay the fence viewers their legal fees within thirty days after the ſervice done, they may ſeverally recover by an action of the caſe, double the amount of ſuch fees; and each fence viewer may be a witneſs, for or againſt his companion in ſuch ſuit. And all laws heretofore

Forfeiture.

Their fees,

made

made reſpecting partition fences, ſo far as they relate to lands held or improved in ſeveralty, ſhall be, and hereby are repealed. Lawsheretofore made, repealed.

[This act paſſed *February* 21, 1786.]

An Act for the more effectually preventing of Treſpaſſes in divers Caſes.

WHEREAS evil minded perſons, in various inſtances, have committed treſpaſſes upon the property and poſſeſſions of others: And whereas the remedy provided, and penalties annexed by the common law, to the commiſſion of ſuch offences, have been found inſufficient to prevent them: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That if any perſon ſhall cut down, deſtroy or carry away any tree or trees whatever, placed or growing for uſe, ſhade or ornament; or any timber, wood or underwood, ſtanding, lying or growing on land not his own, not having the conſent of the owner thereof; or ſhall throw down or open any bars or gates, fence or fences, and leave the ſame down or open; or ſhall injure, mar or deface any fence or fences, belonging to, or encloſing lands not his own; or ſhall dig up or carry away any ſtones, oar, gravel, clay, ſand, turf or mould, roots, fruit or plants; or cut down or carry away any ſedge, graſs, hay or corn, wherein he hath no intereſt, ſtanding, lying, or being on any land not his own; or ſhall take or carry away from any wharf or landing place, whereof he is not a proprietor or owner, any goods whatever, wherein he hath no intereſt, without the leave of ſome perſon who has intereſt therein; or ſhall break the glaſs, or any part of it, in any building not his own; the perſon ſo offending, ſhall forfeit and pay for each tree or ſtick of timber ſo cut down, deſtroyed or carried away, and for each and every other offence, a fine not leſs than *five*, nor more than *forty ſhillings*, to the uſe of the Commonwealth, to be recovered on complaint before any Juſtice of the Peace in the county where the offence ſhall be committed, and ſhall be liable to anſwer in damages to the party injured. Penalty for committing any treſpaſs.

II. *And be it enacted by the authority aforeſaid,* That if any perſon ſhall wilfully break, deface or deſtory any mile-ſtone or publick monument, unleſs properly authorized ſo to do, the perſon ſo offending ſhall forfeit and pay for each offence, a fine not leſs than *forty ſhillings*, nor more than *fifteen pounds*, to the uſe aforeſaid, to be recovered on indictment before the Court of General Seſſions of the Peace in the county where the offence ſhall be committed, and be further liable to anſwer in damages as aforeſaid. Penalty for wilfully deſtroying any mile-ſtone or publick monument.

III. *And be it further enacted,* That any perſon who ſhall commit any of the offences abovementioned, ſecretly, in the night time, or in diſguiſe, ſhall forfeit and pay a fine to the uſe of the Commonwealth, not leſs than *three pounds*, nor more than *twenty pounds*, for each offence, to be recovered on indictment in manner above provided, Penalty for committing ſecretly, or in the night, any offences deſcribed in this act.

provided, and be liable to anſwer damages as aforeſaid; and if any perſon on being indicted and ſentenced to pay any of the fines aforeſaid, ſhall be unable to pay the ſame, the Court paſſing ſentence, may order ſuch perſon to be publickly whipped, not exceeding twenty ſtripes, or be impriſoned not exceeding ninety days, and to find ſureties for his good behaviour for the term of one year.

Treſpaſſes committed on any publicbuildings, damages how recovered.

IV. *And be it enacted by the authority aforeſaid*, That when any treſpaſſes ſhall be committed on any buildings or incloſures belonging to any county, town or pariſh, the county, town or pariſh treaſurer, for the time being, ſhall be, and hereby are ſeverally authorized to ſue for the damage done to the publick buildings or encloſures of their county, town or pariſh, reſpectively; and where any publick buildings are owned partly by the town and partly by the county, in that caſe, the county of town treaſurer, whoever may firſt inſtitute an action, may proſecute for damages thus ſuſtained.

Proviſo.

Provided nevertheleſs, That nothing in this act ſhall prohibit any ſurveyor or highways moving any incumbances in any publick way, nor be conſtrued to prevent any proſecution for theft, where a theft is committed.

[This act paſſed *November* 23, 1785.]

An Act for the Diſtribution of inſolvent Eſtates.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when the eſtate of any perſon deceaſed ſhall be inſolvent or inſufficient to pay all juſt debts which the deceaſed owed, the ſame ſhall be diſtributed to and among all the creditors, in proportion to the ſums to them reſpectively due and owing, ſaving that debts due for all rates and taxes, and debts due to the Commonwealth, and for the laſt ſickneſs and neceſſary funeral expences of the deceaſed, are to be firſt paid. And the executor or adminiſtrator appointed to any ſuch inſolvent eſtate before payment to any be made (except as aforeſaid) ſhall repreſent the condition and circumſtances thereof unto the Judge of Probate. And the ſaid Judge ſhall nominate and appoint two or more fit perſons to be commiſſioners, with full power to receive and examine all claims of the ſeveral creditors; and ſuch commiſſioners ſhall cauſe the times and places of their meeting, to attend the creditors for receiving and examining their claims, to be made known, by cauſing notifications thereof to be poſted up in ſome publick place, in the ſhire town of the county where ſuch deceaſed perſon laſt dwelt, and of the two next counties, or by cauſing an advertiſement thereof to be printed in ſuch publick newspaper or papers as the Judge of Probate ſhall direct; and ſix months and ſuch further time not exceeding eighteen months (as the circumſtances of any eſtate may require) ſhall be allowed by the ſaid Judge to the creditors for bringing in and proving their claims; at the end of which limited time, ſuch commiſſioners ſhall make their report, and preſent upon oath a liſt of all the claims that ſhall have been laid before them, with the ſums they ſhall allow on each

Inſolvent eſtates, how to be diſtributed.

Judge of Probate to appoint Commiſſioners.

claim

claim unto the ſaid Judge; and the Judge ſhall order them meet recompence out of the deceaſed's eſtate for their care and labour in examining the claims; and the debts due for all rates and taxes, and debts due to the Commonwealth, debts incurred for the laſt ſickneſs of the deceaſed, and neceſſary funeral expences as afore provided, being firſt deducted, ſhall order the reſidue and remainder of the eſtate both real and perſonal, (the real eſtate being ſold according to law) to be paid and diſtributed to and among the creditors who ſhall have made out their claims with the commiſſioners as aforeſaid, in proportion to the ſums unto them reſpectively due and owing, ſaving unto the widow (if any be) her right of dower in the houſing and lands of the deceaſed, which dower (unleſs the reverſion ſhall be ſold by the executor or adminiſtrator, and diſtributed with the other eſtate which the Judge may order if he ſee fit, upon application therefor) at the expiration of her term, ſhall alſo be diſtributed among the creditors aforeſaid in like proportion. *Provided*, That nothwithſtanding the report of any commiſſioners, any creditor whoſe claim is wholly or in part rejected, may have the ſame determined at the common law, in caſe he ſhall give notice thereof in writing at the Probate office, within twenty days after ſuch report ſhall be made, and bring and proſecute his action as ſoon as may be; and in caſe the executor or adminiſtrator ſhall be diſſatisfied with any creditor's claim allowed by the commiſſioners, and ſhall give notice thereof at the Probate office, and alſo to the creditor, within twenty days as aforeſaid, ſuch claim ſhall by the Judge of Probate be ſtruck out of the commiſſioners report, unleſs ſuch creditor ſhall commence and proſecute at the common law his claim as aforeſaid as ſpeedily as the ſame can be done, or unleſs the creditor and the executor or adminiſtrator ſhall agree before the Judge to ſubmit the ſame to reference; in which caſe the determination of the referees ſhall be final; and when a claim ſhall be diſputed in the courſe of the common law as aforeſaid, execution ſhall not iſſue as in common caſes, but the judgment of the Court reſpecting the ſame, ſhall be the amount of the claim, and added to or deducted from the commiſſioners report, as the caſe may require. And no action brought againſt any executor or adminiſtrator after the eſtate ſhall be repreſented inſolvent, ſhall be ſuſtained, except for debts due to the Commonwealth, debts due for all rates or taxes, for the deceaſed's laſt ſickneſs and funeral charges, unleſs the executor or adminiſtrator having objection to the claim upon which ſuch action ſhall be brought, ſhall conſent to have the ſame ſettled by courſe of law, in which caſe the judgment of the Court ſhall determine the ſaid claim, and be reported by the commiſſioners as ſuch. And all actions brought againſt any executor or adminiſtrator before the eſtate is repreſented inſolvent, ſhall be continued until it ſhall appear whether the ſaid eſtate is inſolvent or not, and if found inſolvent, the proceſs ſhall be conducted as above provided. And if any creditor ſhall not make out his claim with the commiſſioners within the time of their commiſſion, or at the common law, or before referees, in the manner this act provides, he ſhall be forever barred of his debt; unleſs ſuch creditor ſhall find ſome other

Proviſo.

No action to be ſuſtained, except for debts due to the Commonwealth.

eſtate of the deceaſed, not inventoried or accounted for by the executor or adminiſtrator before diſtribution.

[This act paſſed *June* 15, 1784.]

An Act for the filing and recording of Wills proved without this Government, and for taking Affidavits in writing for the Probate of Wills in certain Caſes.

Copy of any will proved without this Government, filing and recording thereof ſhall be of the ſame force as of an original will.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That where the copy of any will which has been proved and allowed in any Probate Court in any of the United States, or in any foreign State or Kingdom, ſhall be directed to be filed and recorded in any Probate Court in this Government purſuant to this act, the filing and recording thereof ſhall be of the ſame force and effect as the filing and recording of an original will proved and allowed in the ſame Court of Probate; and the ſaid Judge may thereupon proceed to take bonds of the executor, or grant adminiſtration of the ſaid teſtator's eſtate lying in this government, with the will annexed, and ſettle the ſaid eſtate in the ſame way and manner as by law he may or can upon the eſtates of teſtators whoſe wills have been duly proved before him.

Perſons intereſted in wills proved without this government, deſiring the ſame may be filed, directions how to proceed.

II. *And be it further enacted,* That when the executor or any other perſon intereſted in a will that has been proved and allowed in a Court of Probate in any of the United States, or in a Court of Probate in any other State or Kingdom, purſuant to the laws of ſuch State or Kingdom, ſhall produce a copy of ſuch will, with a copy of the Probate thereof, under the ſeal of the Court where the ſame will has been proved and allowed, unto any Judge of Probate in any county in this government, where the teſtator had eſtate, real or perſonal, whereon the ſame will may operate, and ſhall in writing deſire the ſame may be filed and recorded in the Probate office in the ſame county purſuant to this ſtatute, the ſaid Judge ſhall aſſign a time and place for taking the ſame into conſideration, and ſhall cauſe notice thereof to be made in ſome publick news-paper, three weeks ſucceſſively, thirty days at the leaſt before the time aſſigned, to the end that any perſon may appear and ſhew cauſe againſt the filing and recording the ſame; and if at the time aſſigned no objection is made, or none in the judgment of the ſaid Judge ſufficient to prevent it, the ſame Judge may cauſe the ſame copy to be filed in the Regiſtry of the ſaid Court of Probate, and direct the ſame to be alſo there recorded: *Saving always,* an appeal to any perſon apprehending himſelf injured thereby to the Supreme Court of Probate, as in other Probate matters.

Depoſitions of witneſſes in writing may be taken in certain caſes.

III. *And be further enacted,* That when an original will ſhall be offered for Probate before any Court of Probate in this Government, and the witneſſes thereunto live out of the Government, or more than thirty miles diſtant, or by reaſon of age or indiſpoſition of body, are unable to appear and give evidence before the Court,

in

in every ſuch caſe, the depoſition of ſuch witneſs in writing, taken before any perſon or perſons duly authorized by *dedimus poteſtatem* from ſuch Probate Court, ſhall have the ſame force and effect as though the witneſs was preſent and teſtified *viva voce* before the Court.

Provided always however, Before the Probate of any will ſhall be allowed from the evidence of affidavits, ſuch proceedings ſhall be had in all reſpects as in this act are provided reſpecting wills previouſly proved and allowed in a Court of Probate without this Commonwealth; and appeals in all ſuch caſes ſhall be allowed, as is provided for in other Probate matters. Proviſo.

And be it further provided, That nothing in this act ſhall be conſtrued to make valid any will or codicil that is not atteſted and ſubſcribed in the manner the laws of this Commonwealth direct, nor to give operation and effect to the will of an alien different from that which ſuch will would have had before the paſſing this act. Further proviſo.

[This act paſſed *June* 29, 1785.]

An Act for the more ſafe keeping the Regiſtry of Deeds and Conveyances of Land, and for appointing the Time and Manner of chooſing Regiſters.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there ſhall be choſen in each county within this Commonwealth, by the written votes of ſuch perſons as are by the conſtitution qualified to vote for repreſentatives in the ſeveral towns, at their reſpective annual town meetings in the month of *March*, one thouſand ſeven hundred and eighty-ſix, ſome diſcreet ſuitable perſon, having a freehold within the ſame county, of the annual income of *ten pounds* at the leaſt; the votes to be counted and ſorted in the town-meeting by ſuch perſons as ſhall be choſen to count and ſort the votes for that meeting; the names of the perſons voted for, and the number of votes each perſon had, ſhall be recorded by the town-clerk, in the town book, and an atteſted copy of ſuch record ſhall be tranſmitted under ſeal to the next Court of General Seſſions of the Peace, to be held within and for the county, on the firſt day of the Court's ſitting there, to be opened and compared with the like returns from the ſeveral towns in ſuch county. And the perſon having the majority of the ſaid votes, and accepting of the ſaid office, after being ſworn to the faithful diſcharge of the truſt before the Supreme Judicial Court, or Court of Common Pleas, Court of Seſſions, or two Juſtices of the Peace within the county, *quorum unus*; and giving bond to the Clerk of the Court of General Seſſions of the Peace in the ſaid county, with two ſureties, in the ſum of *five hundred pounds*, for the faithful diſcharge of his truſt, ſhall be and continue in the ſaid office five years, and until ſome other perſon ſhall be choſen and qualified in like manner in his ſtead, unleſs ſooner

A regiſter to be choſen in each county in March 1786.

To be ſworn & to give bond.

ſooner removed or diſplaced by order of the Court of General Seſſions of the Peace in ſuch county, for miſconduct in the diſcharge of his duty; and the perſon ſo choſen and qualified as aforeſaid, ſhall reſide and keep his office daily open in the ſhire town of the county, and therein keep the books, records, files, and papers to the ſaid office belonging.

Mode of chooſing in caſe of a vacancy.

II. *And be it further enacted*, That upon the death, reſignation, or removal of any Regiſter of Deeds, two or more Juſtices of the Peace *quorum unus*, living in or near the ſhire town of the ſame county, ſhall iſſue their warrants directed to the ſelectmen of the ſeveral towns within ſuch county, ordering them forthwith to convene the inhabitants of their reſpective towns, qualified as the conſtitution provides to vote for repreſentatives, and proceed to the choice of ſome meet perſon qualified as aforeſaid, to fill up the vacancy; and the ſaid Juſtices ſhall make their warrants returnable to themſelves at a certain day, as ſoon as conveniently may be, ordering the ſelectmen to ſeal up and tranſmit a tranſcript of the record of the number of votes and perſon or perſons voted for in their reſpective towns as before directed, together with the warrants; and the above ſaid Juſtices ſhall at the ſame time give out their notifications to the other Juſtices of ſuch county of their proceedings therein, notifying them to meet upon the day appointed for the return of ſaid warrants, at ſome certain place in the ſhire town; and the major part of the Juſtices of ſuch county, who ſhall meet at the time and place aſſigned as aforeſaid, ſhall open and compare the returns made as before directed, and the perſon having the majority of votes after being ſworn, and giving bonds as aforeſaid, ſhall be the Regiſter of Deeds for ſuch county, until the time appointed by this act for the election of Regiſters of Deeds throughout the Commonwealth, unleſs ſooner removed by the Court of General Seſſions of the Peace of the ſame county, for miſconduct in the diſcharge of his duty.

Same mode of chooſing to be adopted in caſe of a vacancy before March, 1786.

III. *And be it further enacted by the authority aforeſaid*, That upon any ſecond or ſubſequent removal of any Regiſter of Deeds, for either of the cauſes aforeſaid, or in caſe any vacancy ſhall happen in the office of Regiſter of Deeds, in any county within this Commonwealth, before the month of *March*, one thouſand ſeven hundred and eighty-ſix, the ſame mode of procedure as is herein before provided in caſe of the death, reſignation, or removal of any Regiſter of Deeds, ſhall be conſtantly obſerved in order for a new choice, from time to time, until ſome diſcreet and meet perſon, qualified as aforeſaid, ſhall be choſen to the ſaid office by the majority of the votes returned, in which caſe the perſon ſo choſen, after being ſworn and obliged as aforeſaid, ſhall be Regiſter of Deeds for ſuch county, until ſome other ſhall be choſen.

Clerk of the Common Pleas to act as regiſter in the time of a vacancy.

IV. *And be it further enacted*, That upon a vacancy in the office of Regiſter of Deeds in any county, the Clerk of the Court of Common Pleas of ſuch county, being firſt ſworn before two Juſtices of the Peace, *quorum unus*, for the faithful diſcharge of the truſt, ſhall take into his cuſtody the ſeveral books wherein the deeds and conveyances of land are recorded, together with the deeds and other

other papers to the ſaid office belonging. And the ſaid Clerk ſhall receive all deeds and other papers brought to be recorded during ſuch vacancy, and he ſhall note thereon the time of their being received, and the record ſhall bear date accordingly, for which he ſhall be allowed *ſix pence* for each deed or paper, and no more; and ſuch Clerk is alſo empowered, during ſuch vacancy, to make out atteſted copies of any ſuch deeds and other papers and records to him committed as aforeſaid, which copies ſhall be valid to all intents and purpoſes, as though the ſame had been made out by any Regiſter choſen, qualified, ſworn and obliged as aforeſaid, for which copies the ſaid Clerk ſhall be allowed the ſame fees as is or may be provided for Regiſters in ſimilar caſes. And upon the appointment of a Regiſter as aforeſaid, he ſhall deliver up the ſaid books, deeds and papers, into his hands.

Regiſters to be choſen every 5 years ſucceſſively.

V. *And be it further enacted by the authority aforeſaid*, That the qualified voters as aforeſaid in each reſpective town within this Commonwealth, at their annual meeting in *March*, ſeventeen hundred and ninety-one, and every five years from thence ſucceſſively following, forever, at their ſeveral town-meetings in *March*, ſhall be, and hereby are empowered and required, to proceed to chooſe a Regiſter of Deeds for each county reſpectively within this Commonwealth, qualified as in this act is directed, the manner and determination of the choice, initiation into office, and the duties and obligations he ſhall be under while in office, to be the ſame as in this act is before expreſſed.

If no perſon has a majority of all the votes, the Court of Seſſions to call another meeting.

VI. *And be it further enacted*, That if upon camparing the votes that may be collected in *March*, one thouſand ſeven hundred and eighty-ſix, or in the month of *March* at any period five years afterwards, no perſon ſhall be choſe by a majority of the whole votes returned, the Court of Seſſions ſhall iſſue their warrants to the ſelectmen of the ſeveral towns, to call a meeting of their reſpective towns, to vote a ſecond time for the choice of a Regiſter, and make their warrants returnable at the then next Court of General Seſſions of the Peace to be held in the ſame county, and ſo *toties quoties*, until ſome one perſon ſhall be elected by the majority voting. And to the end there may not be too great a riſque of fire by keeping more publick records, papers, and files in one houſe or under one roof than is neceſſary:

Clerks of Courts not to be Regiſters.

VII. *Be it further enacted*, That no Clerk of any Court of Common Pleas, or of the Supreme Judicial Court, ſhall at the ſame time be the Regiſter of Deeds for any county.

[This act paſſed *March* 17, 1784.]

An Act empowering the Inhabitants of the County of *Lincoln*, Eaſtward of *Union-River*, to chooſe a Regiſter of Deeds, and for the eſtabliſhing a Court of Probate to be holden within and for all that Part of the ſaid County, which lies to the Eaſtward of the ſaid River.

Preamble.

WHEREAS the inhabitants of that part of the county of Lincoln, *which lies eaſtward of* Union-River, *are put to great difficulty in getting their conveyances of real eſtates properly recorded, and in effecting the diſtribution and ſettlement of the eſtates of deceaſed perſons among them, as they are in ſuch caſes frequently obliged, at great expence and trouble, to travel to* Pownalborough, *where alone the office of Regiſter of Deeds, and the Court of the Judge of Probate of wills, and for granting letters of adminiſtration for the ſaid county, are now kept and held:*

Regiſter of Deeds to be appointed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That a Regiſter of Deeds ſhall be appointed in manner provided by law, within and for the diſtrict aforeſaid, whoſe office ſhall be holden at *Machias*; and the inhabitants of the ſaid diſtrict are hereby authorized and empowered to chooſe a Regiſter of Deeds for the ſame diſtrict, in order to which, *Alexander Campbell*, Eſq. a Juſtice of the Peace within and for the ſaid county, is hereby authorized and empowered to iſſue his warrant to the ſelectmen of *Machias*, and to ſome principal inhabitant of each of the plantations within the ſaid diſtrict, directing the ſaid ſelectmen and principal inhabitants reſpectively, to call a regular meeting of the inhabitants of the ſaid town and ſeveral plantations, qualified as the law directs for voting in town affairs, to meet in the ſaid towns and plantations to which they reſpectively belong, as ſoon as conveniently may be, for the purpoſe of chooſing a Regiſter of Deeds for the ſame diſtrict.

Alexander Campbell, Eſq. empowered to call a meeting.

Town-Clerks to make return on oath.

II. *And be it further enacted by the authority aforeſaid,* That each of the Clerks of the towns and plantations aforeſaid, ſhall, as ſoon as may be after the ſaid meetings and elections, reſpectively make return on oath to the Juſtices aforeſaid, of the names of the perſons voted for, with the number of votes which each perſon had, ſet againſt their names reſpectively, which returns ſhall by the ſaid Juſtices be tranſmitted to the then next Court of General Seſſions of the Peace to be holden within and for the ſaid county; which ſaid Court of Seſſions ſhall examine the ſaid returns, and declare the choice of ſaid Regiſter in manner provided by law.

The Regiſter to be ſworn, &c.

III. *And be it further enacted by the authority aforeſaid,* That the ſaid Regiſter when elected, ſhall be ſworn, give bond, and be qualified for the execution of his office, in all reſpects, in manner as is provided by law for the obligating and qualifying of other Regiſters of Deeds.

IV.

IV. *And be it further enacted by the authority aforeſaid*, That the ſaid Regiſter, elected and qualified as aforeſaid, ſhall continue in his office during the term of five years next after he ſhall be declared to have been elected as aforeſaid; and from and after the twentieth day of *July* next, ſhall be fully authorized and empowered to regiſter and record all deeds of conveyance of any lands or other real eſtate lying within the ſaid diſtrict, as are by law required to be regiſtered and recorded; and the records of all deeds by him ſo regiſtered and recorded, ſhall be good and valid to all intents and purpoſes. How long to continue in office.

V. *And be it further enacted by the authority aforeſaid*, That the records of any deeds of conveyance of lands or other real eſtate lying within the ſaid diſtrict, which after the ſaid twentieth day of *July*, ſhall be made by any other than the Regiſter to be elected and qualified as aforeſaid, ſhall be void and of no effect; and the ſaid Regiſter ſhall be entitled to demand and receive all ſuch fees in the execution of his office, as Regiſters of Deeds are by law entitled to receive. Records made by any other than the Regiſter, to be void.

VI. *And be it further enacted by the authority aforeſaid*, That a Court of Probate ſhall be held within the ſaid diſtrict, and that ſome ſuitable perſons be appointed in the manner the conſtitution directs for Judge and Regiſter of the ſaid Court, who from and after the twentieth day of *July* next, ſhall have power and authority to do and perform all the buſineſs which Judges and Regiſters of Probate by the law of this Commonwealth "for eſtabliſhing Courts of Probate," have power and authority to do and perform. Courts of Probate to be held within the diſtrict.

VII. *And be it further enacted by the authority aforeſaid*, That all Probate of wills and letters of adminiſtration granted upon the eſtates of perſons (who at the time of their deceaſe belonged within the ſaid diſtrict) and doings, after the ſaid twentieth day of *July*, other than ſuch as ſhall be done and made by the ſaid Judge who ſhall be appointed as aforeſaid, ſhall be void and of no effect.

[This act paſſed *November* 6, 1784.]

An Act for dividing the County of *Hampſhire* into three Diſtricts, for the Purpoſe of chooſing Regiſters of Deeds, and for determining the Places at which Courts of Probate ſhall in future be holden in the ſaid County.

WHEREAS a great part of the inhabitants of the county of Hampſhire, *by reaſon of their diſtance from the place, where the office of Regiſter of Deeds by the laws now in being, is directed to be kept, are ſubjected to great inconvenience in procuring their conveyances of real eſtate to be recorded: For remedy whereof in future:* Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the towns and diſtricts, of *Northampton, Hadley, Hatfield, Southadley*,

ley, Southampton, Amherſt, Granby, Belchertown, Ware, Pelham, Greenwich, Middleſield, Williamſburgh, Cheſterfield, Worthington, Cumington, Goſhen, Plainfield, Cheſter, Norwich, Weſthampton and *Eaſthampton*, and ſuch gores or tracts of land unincorporated, as may lie between any of the ſaid towns, be, and they hereby are conſtituted a diſtrict for the Regiſtry of Deeds; and the inhabitants of the ſaid towns and diſtricts, are hereby authorized to chooſe a Regiſter of Deeds, for the ſaid diſtrict, in the manner provided by law; and the Regiſter ſo choſen ſhall keep his office within the ſaid town of *Northampton*; and *Eleazer Porter*, Eſquire, of ſaid *Hadley*, is hereby authorized and empowered to iſſue his warrants, directed to the ſelectmen of the ſeveral towns and diſtricts aforeſaid, ordering them forthwith to convene the inhabitants of their reſpective towns or diſtricts, qualified to vote for repreſentatives, that they may proceed to the choice of ſome meet perſon, qualified by law, for the office of Regiſter of Deeds, and ordering the ſelectmen to ſeal up and tranſmit a tranſcript of the record of the number of votes, and perſon or perſons voted for, in their reſpective towns or diſtricts, together with the warrants, to the Court of General Seſſions of the Peace next to be holden at *Springfield*, within and for the county of *Hampſhire*, on the third Tueſday of *May* next, to be opened and compared with the like returns from the other towns in ſuch diſtrict; and the perſon having the majority of votes, after being ſworn, and giving bond as by law directed, ſhall be the Regiſter of Deeds in the ſaid diſtrict, and ſhall continue in the ſaid office, until the laſt day of *March*, one thouſand ſeven hundred and ninety-one, and until another is choſen.

Eleazer Porter, Eſq. of Hadley, to iſſue his warrant for calling a meeting in the ſeveral towns, for the choice of a Regiſter of Deeds.

II. *Be it further enacted*, That the towns, plantations and lands in the ſaid county of *Hampſhire*, which lie north of the towns above enumerated, be, and they hereby are conſtituted a ſeparate diſtrict for the Regiſtry of Deeds; and the inhabitants of the ſaid towns and plantations are hereby authorized to chooſe a Regiſter of Deeds for the ſaid diſtrict, in the manner provided by law; and the Regiſter ſo choſen ſhall keep his office in the town of *Deerfield*, within the ſaid diſtrict: and *David Smead*, Eſq. of *Greenfield*, within the ſaid diſtrict, is hereby authorized to iſſue his warrant to the ſelectmen of the ſeveral towns, and to ſome principal inhabitant of each of the plantations in ſaid diſtrict, in manner, and returnable as aforeſaid; and the votes being opened and compared in the ſaid Court of General Seſſions of the Peace, the perſon having the majority of votes, after being ſworn and giving bond as aforeſaid, ſhall continue in the ſaid office, until the laſt day of *March* above mentioned, and until another is choſen; and if it ſhall appear that no perſon has a majority of votes in the ſaid diſtricts, or either of them, the ſame proceedings ſhall be had, as are directed by law in other caſes of vacancy, in the office of Regiſter of Deeds.

Towns & plantations north of thoſe before enumerated, conſtituted a ſeparate diſtrict for the Regiſtry of Deeds.

David Smead, Eſq. to call a meeting.

III. *And be it further enacted*, That the perſons choſen as aforeſaid, ſhall be ſubject to the rules and diſqualifications to which Regiſters of Deeds, for the ſeveral counties, are ſubject; and from and after the firſt day of *June* next, ſhall be fully authorized and empowered to regiſter and record all deeds of conveyance, of any lands

Perſons choſen, ſhall be ſubject to the ſame rules, as other Regiſters.

lands or other real eſtate lying within the diſtricts for which they are reſpectively choſen; and the record of deeds as aforeſaid ſhall be valid to all intents and purpoſes whatever; and the record of any deeds of conveyance of land or other real eſtate, lying within the ſaid diſtricts, which after the ſaid firſt day of *June* ſhall be made by any other than the perſons to be choſen as aforeſaid, by the ſaid diſtricts reſpectively, ſhall be void and of no effect; and the Regiſters to be choſen as aforeſaid, ſhall be intitled to the ſame fees in the execution of their reſpective offices, as Regiſters of Deeds in the ſeveral counties are intitled to.

Towns, diſtricts and plantations, ſouth of thoſe before enumerated, ſhall be a ſeparate diſtrict.

IV. *And be it further enacted*, That the towns, diſtricts, plantations and lands in the ſaid county of *Hampſhire*, which lie ſouth of the towns above enumerated, ſhall be a ſeparate diſtrict for the Regiſtry of Deeds, in which diſtrict the office of Regiſter ſhall be kept in the town of *Springfield*; and nothing in this ſhall be taken in any manner to affect the choice of the preſent Regiſter of Deeds for the ſaid county, ſo far as it reſpects the diſtrict laſt aforeſaid.

And whereas it would be convenient for the inhabitants of the ſaid county of *Hampſhire*, if the Courts of Probate to be holden therein, ſhould be holden in divers parts of the county:

Places for holding Courts of Probate.

V. *Be it therefore enacted by the authority aforeſaid*, That the Judge of Probate for the county of *Hampſhire*, be, and hereby is directed, from and after the firſt day of *June* next, to hold his Courts of Probate within the ſaid county, at the following places, *to wit*, three in the town of *Springfield*, three in the town of *Northampton*, three in the town of *Hadley*, and three in the town of *Deerfield*, annually, any uſage or cuſtom to the contrary notwithſtanding.

[This act paſſed *March* 1, 1787.]

An Act for dividing the County of *Berkſhire* into three Diſtricts, for the Purpoſe of chooſing Regiſters of Deeds in the ſaid Diſtricts.

Preamble.

WHEREAS a great part of the inhabitants of the county of Berkſhire, *by reaſon of their diſtance from the place where the office of Regiſter of Deeds, by the laws now in being, is directed to be kept, are ſubjected to great inconvenience in procuring their conveyances of real eſtate, to be recorded:* For remedy whereof in future,

Lenox and other towns, conſtituted a diſtrict for the regiſtry of deeds.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That the towns of *Lenox*, *Pittsfield*, *Richmond*, *Stockbridge*, *Lee*, *Tyringham*, *Becket*, *Waſhington* and *Partridgefield*, and ſuch gores or tracts of land unincorporated, as may lie between any of the ſaid towns, be, and they hereby are conſtituted a diſtrict for the Regiſtry of Deeds; and the inhabitants of the ſaid towns and diſtricts, are hereby authorized to chooſe a Regiſter of Deeds for the ſaid diſtrict, in the manner provided by law; and the Regiſter ſo choſen, ſhall keep his office

Authorized to chooſe a Regiſter.

Jahleel Woodbridge, Eſq. to iſſue his warrants for calling meetings.

within the ſaid town of *Lenox*; and *Jahleel Woodbridge*, Eſq. of *Stockbridge*, is hereby authorized and empowered to iſſue his warrants, directed to the ſelectmen of the ſeveral towns aforeſaid, ordering them forthwith to convene the inhabitants of their reſpective towns, qualified to vote for repreſentatives, that they may proceed to the choice of ſome meet perſon, qualified by law, for the office of a Regiſter of Deeds, and ordering the ſelectmen, to ſeal up, and tranſmit a tranſcript of the record of the number of votes, and of the perſon or perſons voted for, in their reſpective towns, together with the ſaid warrants, to the Court of General Seſſions of the Peace, next to be holden at *Lenox*, within and for the county of *Berkſhire*, on the ſecond Tueſday of *September* next, to be opened and compared with the like returns from other towns in ſuch diſtrict; and the perſon having the majority of votes, after being ſworn, and giving bond as by law directed, ſhall be the Regiſter of Deeds in the ſaid diſtrict, and ſhall continue in ſaid office, until the laſt day of *March*, one thouſand ſeven hundred and ninety-one, and until another is choſen.

Towns & plantations which lie north, conſtituted a ſeparate diſtrict.

II. *Be it further enacted*, That the towns, plantations and all other lands in ſaid county of *Berkſhire*, which lie north of the towns abovementioned, be, and they hereby are conſtituted a ſeparate diſtrict for the Regiſtry of Deeds; and the inhabitants of the ſaid towns, plantations and other lands, are hereby authorized to chooſe a Regiſter of Deeds, for the ſaid diſtrict, in the manner provided by law; and the Regiſter ſo choſen, ſhall keep his office in the town of *Laneſborough*, within the ſaid diſtrict; and *William Towner*, Eſq. of *Williamſtown*, within the ſaid diſtrict, is hereby authorized, to iſſue his warrant, to the ſelectmen of the ſeveral towns, and to ſome principal inhabitant of each of the plantations in ſaid diſtrict, in manner and returnable as aforeſaid, and the votes being opened and compared in the ſaid Court of General Seſſions of the Peace, the perſon having a majority of votes after being ſworn, and giving bond as aforeſaid, ſhall continue in the ſaid office, until the laſt day of *March*, abovementioned, and until another is choſen; and if it ſhall appear that no perſon has a majority of votes in the ſaid diſtricts, or either of them, the ſame proceedings ſhall be had as are directed by law, in other caſes of vacancy, in the office of Regiſter of Deeds.

William Towner, Eſq. to iſſue his warrant for calling meetings.

Perſons choſen ſhall be ſubject to the rules and diſqualifications of other Regiſters, &c.

III. *And be it further enacted*, That the perſons choſen as aforeſaid, ſhall be ſubject to the rules and diſqualifications to which Regiſters of Deeds, for the ſeveral counties are ſubject; and from and after the firſt day of *January* next, ſhall be fully authorized to regiſter and record all Deeds or other conveyances of lands or other real eſtate, lying within the diſtrict for which they are reſpectively choſen; and the record of any Deed or other conveyance of lands or other real eſtate, which after the firſt day of *January* next, ſhall be made by any other than the perſons choſen, and qualified as aforeſaid, for the ſaid diſtricts reſpectively, ſhall be void and of no effect, and the Regiſters to be choſen as aforeſaid, ſhall be intitled to the ſame fees, in the execution of their reſpective offices, as Regiſters of Deeds in the ſeveral counties are intitled to.

IV.

IV. *And be it further enacted*, That the towns, diſtricts, plantations and lands in the ſaid county of *Berkſhire*, which lie ſouth of the towns above enumerated, ſhall be a ſeparate diſtrict, for the Regiſtry of Deeds, in which diſtrict, the office of Regiſter ſhall be kept, in the town of *Great-Barrington*: And nothing in this act, ſhall be taken in any manner to affect the choice of the preſent Regiſter of Deeds for the ſaid county, ſo far as it reſpects the diſtrict laſt aforeſaid.

Towns & plantations which lie ſouth, ſhall be a ſeparate diſtrict.

V. *And be it further enacted*, That all the records of Deeds and other conveyances of lands in ſaid county, which have been made or ſhall be made, before the firſt day of *January* next, ſhall be removed and depoſited in the Regiſter's office, herein provided for, in the ſaid town of *Lenox*, to be kept by the Regiſter aforeſaid, for the firſt mentioned diſtrict.

Deeds and conveyances ſhall be removed to the Regiſter's office, in Lenox.

[This act paſſed *June* 18, 1788.]

An Act to compel Executors living without the Commonwealth, to ſettle their Accounts; and to oblige Adminiſtrators and Guardians, not being Inhabitants of this Commonwealth, to give Bonds with proper Sureties for the Performance of the Duties of their Truſt.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when any perſon who ſhall hereafter be appointed executor to any teſtament, ſhall, at the time of the probate of the ſame, live without this Commonwealth, he ſhall, before the Probate of the will whereby he is appointed, enter into bonds to the Judge of Probate for the county in which the teſtator lived, with ſufficient ſureties, being inhabitants of the ſaid Commonwealth, for his faithful performance of the truſt repoſed in him: And if ſuch executor ſhall refuſe to enter into ſuch bonds, adminiſtration ſhall be granted, with the will annexed, in the ſame manner as if ſuch executor declined the truſt.

Perſons appointed executors, living without this Commonwealth, to enter into bonds

II. *And be it further enacted*, That when any executor ſhall remove himſelf without this Commonwealth, and become an inhabitant of ſome other State, place, or kingdom, before his account ſhall be ſettled, and ſhall not, upon being thereunto required by the Judge of Probate in the county where the will ſhall have been proved, come into this Commonwealth and ſettle his accounts, adminiſtration ſhall be granted, *de bonis non*, with the will annexed, in the ſame manner as if ſuch executor had died inteſtate; and he ſhall be anſwerable to ſuch adminiſtrator for all the eſtate which ſhall have come to his hands; having credit for his juſt expences, the debts he may have diſcharged, and the legacies he may have paid.

Executors removing without this Commonwealth before the ſettlement of their accounts, adminiſtration to be granted *de bonis non*, &c.

III.

In caſe executors refuſe to ſettle their accounts.

III. *And be further enacted*, That where any perſon now living without this Commonwealth, ſhall have been appointed executor to the will of any perſon now deceaſed, ſhall, upon being duly required by the Judge of Probate of the county where the will hath been proved, to come and ſettle his accounts, and ſhall refuſe to appear and ſettle the ſame, and pay the debts and legacies, adminiſtration *de bonis non*, with the will annexed, ſhall be granted in the ſame manner as if ſuch will had been proved after the making of this act, and the executor had removed himſelf without the Commonwealth after the Probate of the ſame will.

Perſons not being inhabitants of this Commonwealth, taking letters of adminiſtration, to give bond.

IV. *And be it further enacted*, That when any perſon or perſons, not being inhabitants of this Commonwealth, ſhall take letters of adminiſtration on any inteſtate eſtate, or letters of guardianſhip in behalf of minors, he or they ſhall, previous to ſuch letters being granted, give bond with ſufficient ſureties, being inhabitants of this Commonwealth, to the Judge of Probate granting ſuch letters, for the faithful performance of the truſt repoſed in ſaid adminiſtrators or guardians.

[This act paſſed *October* 23, 1782.]

An Act to authorize the Courts of Law to enter up Judgment againſt the Goods and Eſtate of deceaſed Perſons, when the Executor or Adminiſtrator neglects or refuſes to proſecute or defend.

Preamble.

WHEREAS the Courts of common law, when the plaintiff or defendant, appellant or appellee, die before judgment, are not authorized to render judgment againſt the eſtate of the deceaſed, unleſs the executor or adminiſtrator does voluntarily appear and become a party to the ſuit:

Where parties to actions die, and the adminiſtrator refuſes to proſecute, &c judgment to be made up as in caſe of voluntary appearance.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That in all actions now pending, or that may be hereafter pending in the Supreme Judicial Court, or in any Court of Common Pleas in this Commonwealth, by appeal, continuance or otherwiſe, and the plaintiff or defendant, appellant or appellee, complainant or reſpondent ſhall die before final judgment, and the executor or adminiſtrator of the deceaſed party, after taking upon himſelf the ſaid truſt, ſhall neglect or refuſe to become a party to the ſuit, the Court before whom ſuch cauſe ſhall be pending, in caſe the cauſe of action does by law ſurvive, may enter up judgment againſt the goods and eſtate of the deceaſed party, in the ſame way and manner judgment might have been, in caſe the executor or adminiſtrator had voluntarily after ſuch death made himſelf a party to the ſuit. *Provided always*, That ſuch executor or adminiſtrator be duly ſerved with a notification from the Clerk of the Court where ſuch ſuit is pending, fourteen days before-hand.

Proviſo.

II.

II. *And be it further enacted by the authority aforeſaid,* That when any goods or eſtate are attached upon any writ or proceſs which ſhall be pending as aforeſaid, the ſame ſhall not be releaſed or diſcharged, by reaſon of the death of either party, but be held good to reſpond the judgment to be given on ſuch ſuit or proceſs, in the ſame manner as by law they would have been if ſuch deceaſed perſon had been living; any law, uſage or cuſtom to the contrary notwithſtanding. *Provided always,* That where any eſtate attached as aforeſaid, ſhall by the executor or executors, or adminiſtrator or adminiſtrators of the ſame, be repreſented as inſolvent, and a commiſſion of inſolvency ſhall thereupon iſſue; in all ſuch caſes attachments made as aforeſaid ſhall have no force or efficacy after the death of the original defendant or defendants in the action.

Eſtates attached not to be diſcharged by the death of the party.

Proviſo.

III. *And be it further enacted,* That all executors and adminiſtrators of any eſtate, ſhall, upon motion to the Court where any ſuit is or may be depending againſt them in their ſaid capacity, be intitled to continuance of the ſame until the next term of the ſaid Court.

Executors, &c. intitled to a continuance.

[This act paſſed *March* 17, 1784.]

An Act providing a ſpeedy Method for doing Juſtice, when, through Miſtake, Executions are levied on Real Eſtate not belonging to the Debtors.

WHEREAS it has happened that executions have been or may be extended and levied on real eſtate for the purpoſe of ſatisfying judgments of Courts, and after the levying ſuch executions, it may appear that the real eſtate levied upon did not at the time of extending ſuch execution belong to the debtor, and thereby the creditor may be deprived of his juſt debt, or be at great expence in recovering it: Therefore,

Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That in ſuch caſes, upon the application of the creditor to the Juſtices of the Court from whence ſuch execution iſſued, ſuch Juſtices may order a writ of *ſcire facias* to iſſue againſt ſuch debtor, requiring him to appear before ſaid Court, and ſhew cauſe, if any he has, why an alias execution ſhould not iſſue againſt him for debt and coſts; and if ſuch debtor, being duly ſummoned, ſhall neglect to appear in obedience to ſuch writ, or appearing, ſhall not ſhew ſufficient cauſe why an alias execution ſhould not iſſue againſt him, the Court ſhall thereupon order an alias execution againſt ſuch debtor for debt and coſts; and the doings by virtue of the former execution ſhall be conſidered as void and of no effect in law; but if it ſhall appear to the ſaid Court that the creditor had no juſt cauſe for ſuch application, the debtor ſhall recover againſt the creditor double coſts, and the Court ſhall award execution accordingly.

When, thro' miſtake executions are levied on real eſtate not belonging to the debtors, Juſtices may order a writ of ſcire facias againſt ſuch debtors.

Provided

Proviſo. *Provided nevertheleſs*, That no application by any creditor ſhall be ſuſtained after the expiration of two years from the time of extending and levying execution as aforeſaid.

[This act paſſed *June* 14, 1785.]

An Act authorizing Executors and Adminiſtrators, to make Sale of Real Eſtate, mortgaged to their Teſtators or Inteſtates, and ſuch as they ſhall take in Execution, in certain Caſes.

Preamble. *WHEREAS doubts have ariſen, and may ariſe, with reſpect to the extent of the right, intereſt, title and eſtate, which executors or adminiſtrators may have, in houſes, lands, and tenements mortgaged to their reſpective teſtators or inteſtates, and alſo the right, intereſt, title and eſtate, which executors or adminiſtrators may have, in houſes, lands, and tenements, ſet off by execution at the ſuit of executors or adminiſtrators, for debts due to the eſtates of perſons deceaſed; for the better defining and declaring the law in thoſe reſpects:*

When perſons to whom lands are mortgaged, ſhall deceaſe before recovery, the debts due on ſuch mortgage, ſhall be conſidered aſſets in the hands of the executors, &c.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That whenever any perſon or perſons to whom any lands, tenements, or hereditaments, may be mortgaged for the payment of debts, or the performance of any collateral promiſe or engagement whatſoever, ſhall deceaſe before recovery of ſeizin and poſſeſſion of the lands, tenements or hereditaments, mortgaged, that then the debts due on ſaid deed of mortgage, and the lands, tenements, or hereditaments, mortgaged by the ſame, ſhall be aſſets in the hands of executors, or adminiſtrators, as perſonal eſtate; and the executors or adminiſtrators, ſhall have the ſame controul and power of diſpoſal of all the eſtate, which the ſaid deceaſed had, in the lands, tenements, and hereditaments mortgaged, as if they had been a pledge of perſonal eſtate; and executors or adminiſtrators, may bring actions of ejectment, for recovery of ſeizin and poſſeſſion of the lands, tenements, and hereditaments mortgaged as aforeſaid; in which actions it ſhall be ſufficient to declare on the ſeizin, and poſſeſſion, of the teſtator or inteſtate.

When executors ſhall recover ſeizen, &c. proceedings in ſuch caſe.

II. *Be it further enacted by the authority aforeſaid*, That whenever executors or adminiſtrators, ſhall recover ſeizin, or poſſeſſion of lands, tenements, or hereditaments mortgaged as aforeſaid; the executors or adminiſtrators, ſhall be ſeized and poſſeſſed of the eſtate, ſo recovered, to the ſole uſe, and behoof of the heirs of the inteſtate, or ſuch deviſees of the teſtator, to whom ſaid eſtate may be deviſed; but in caſe the lands mortgaged, and recovered as aforeſaid, ſhall be neceſſary for the payment of debts, legacies, annuities, or charges of adminiſtration, and the ſame ſhall be certified from the Court of Probate, the ſaid executors or adminiſtrators, ſhall have full right, power and authority, to diſpoſe and make ſale of the whole or part of the lands, tenements and hereditaments recovered as aforeſaid, ſubject however, to the equity of redemption: And

it

it ſhall be lawful for the ſaid executors and adminiſtrators, to ſell the ſame at private ſale, to any perſon, who ſhall pay therefor, the whole of the money due upon the mortgage, at the time of ſale. *Provided* the Court of Probate, ſhall give leave for ſuch private ſale; or otherwiſe the ſame ſhall be ſold at publick auction, to the higheſt bidder, notice of ſuch intended ſale, to be given as is preſcribed in, and by an act, entitled, "An act directing the ſettlement of the eſtates of perſons deceaſed, and for the conveyance of real eſtates." Proviſo.

III. *Be it further enacted by the authority aforeſaid,* That whenever any executor or adminiſtrator, ſhall recover judgment, for any ſum of money, whereon execution ſhall iſſue, and lands, tenements, or hereditaments, ſhall be ſet off to the ſaid executor or adminiſtrator, in diſcharge of the ſaid execution, the ſaid executor or adminiſtrator ſhall be ſeized and poſſeſſed of the whole eſtate, in the lands, tenements or hereditament, ſo ſet off, to the ſole uſe, and behoof of the heirs of the deceaſed inteſtate, or of the reſiduary legatee, or legatees of the teſtator, as the caſe may be: provided however, that in caſe the lands, tenements, and hereditaments, ſo ſet off on the ſaid execution ſhall be neceſſary for the payment of debts, legacies, annuities or charges of adminiſtration, the ſame being certified from the Court of Probate, the ſaid executor or adminiſtrator ſhall have full power and authority, and they are hereby fully authorized and empowered, to ſell, and diſpoſe of the ſame, for the purpoſes aforeſaid, with the ſaving of the right of redemption; and it ſhall be lawful for the ſaid executor or adminiſtrator to ſell the ſame as aforeſaid, at private ſale, to any perſon who ſhall pay therefor, the money, at which they ſhall have been apprized and ſet off, in ſatisfaction of the execution, in whole or in part; provided the Court of Probate, ſhall give leave therefor; or otherwiſe the ſale ſhall be made at publick auction, in like manner as is herein before directed for the ſale of mortgaged lands, tenements and hereditaments. Lands &c. ſet off, to be to the uſe of heirs, &c. and to be ſold in caſe.

IV. *Be it further enacted by the authority aforeſaid,* That after executors or adminiſtrators, ſhall recover ſeizin, or poſſeſſion of any lands, tenements, or hereditaments, mortgaged as aforeſaid, and before conveyance or aſſignment thereof, in manner aforeſaid, if any mortgagor, his heirs, executors, adminiſtrators, or aſſigns, ſhall within the time limited, for the equity of redemption, redeem the ſaid mortgaged premiſes, the executors or adminiſtrators, ſhall in every inſtance, be entitled to receive the ſaid redemption money, and are hereby authorized, empowered, and directed to diſcharge the ſaid mortgaged premiſes, by releaſe, quit-claim, or other legal conveyance. Executors entitled to redemption money.

V. *Be it further enacted by the authority aforeſaid,* That nothing in this act contained, ſhall be conſtrued, to controul any laſt will and teſtament, or any part thereof. Proviſo.

[This act paſſed *June* 27, 1786.]

An

An Act authorizing the Juſtices of the Supreme Judicial Court to licence the Sale of Real Eſtate by married Women, in certain Caſes, and for other Purpoſes in the Act mentioned.

Preamble.

WHEREAS it ſometimes happens, that huſbands abſent themſelves from this Commonwealth, and abandon their wives, not making ſufficient proviſion for their ſupport, who may be thereby reduced to great diſtreſs, not being able to make any valid contracts or diſpoſe of any eſtate of their own: For remedy whereof,

Juſtices empowered to licence the ſale of real eſtate by married women in caſes where huſbands abſent themſelves.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That in all ſuch caſes where any married man has heretofore, or may hereafter abſent himſelf from this Commonwealth, abandoning his wife and not making ſufficient proviſion for her ſupport or maintenance, the Juſtices of the Supreme Judicial Court are hereby authorized, at any of the terms of the ſaid Court, upon the application of any ſuch wife, to empower and enable her, during the abſence of her huſband from this Commonwealth, and no longer, in her own name, to make and execute any contract either under ſeal or otherwiſe, and by deed to ſell and convey any eſtate real or perſonal, of which at the time of ſuch ſale, ſhe ſhall be ſeized or poſſeſſed in her own right, and to commence, proſecute and defend any ſuit in law or equity, to final judgment and execution, in the ſame manner, as fully, and to all intents and purpoſes, as if ſhe was ſole and unmarried; or the ſaid Juſtices may grant to any ſuch wife any or all the powers above deſcribed, according as they ſhall judge the circumſtances of ſuch wife ſhall require.

If ſuch huſbands return, remedy ſhall lie againſt them.

II. *And be it further enacted by the authority aforeſaid,* That if any ſuch huſband ſhould return into this Commonwealth, while any contract made by his wife, purſuant to the powers aforeſaid, ſhould remain undiſcharged, the ſame remedy ſhall lie againſt ſuch huſband, as if the contract had been made by her before the marriage; and no ſuit pending, wherein his wife ſhall be a party, purſuant to the ſaid powers, ſhall abate by his return into this Commonwealth.

Notice of applications, ſhall be given.

III. *And be it further enacted by the authority aforeſaid,* That when application ſhall be made by any wife for any or all of the powers aforeſaid, the Juſtices of the ſaid Court, ſhall previous to their granting any of the powers aforeſaid, cauſe ſuch publick notice of the ſaid application to be given, as by law they are directed in caſe of any libel filed by any married woman for a divorce.

[This act paſſed *November* 21, 1787.]

Perpetual



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART III.

Courts and Forms of Proceſs.

An Act empowering the Supreme Judicial Court to take Cognizance of Matters heretofore Cognizable by the late Superior Court.

WHEREAS by the laws heretofore made by the General Aſſembly of the late Province, Colony and State of Maſſachuſetts-Bay, Preamble. *a Superior Court of Judicature, Court of Aſſize and General Goal Delivery was conſtituted, and ſundry powers and authorities are given to the ſame Court by particular laws. And whereas by the conſtitution and frame of government of the Commonwealth of* Maſſachuſetts, *the ſtile and title of the ſame Court is now the Supreme Judicial Court of the Commonwealth of* Maſſachuſetts. *And the conſtitution aforeſaid having provided that the laws heretofore made and adopted, ſhould continue and be in force until they ſhall be altered or repealed by the Legiſlature; whence ſome doubts may ariſe whether the Supreme Judicial Court ſhall have cognizance of thoſe matters which by particular laws were expreſsly made cognizable by the Superior Court of Judicature, Court of Aſſize and General Goal Delivery:*

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Court which hath been or ſhall be hereafter appointed and

The Supreme Judicial Court to take cognizance of all matters cognizable by the late Superiour Court of Judicature, &c. unleſs.

commiſſioned according to the conſtitution as the Supreme Judicial Court of this Commonwealth, ſhall have cognizance of all ſuch matters as have heretofore happened, or that ſhall hereafter happen, as by particular laws were made cognizable by the late Superiour Court of Judicature, Court of Aſſize and General Goal Delivery, unleſs where the conſtitution and frame of government hath provided otherwiſe.

[This act paſſed *February* 20, 1781.]

An Act eſtabliſhing a Supreme Judicial Court within the Commonwealth.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there ſhall be a Supreme Judicial Court within this Commonwealth, to be held and kept at the ſeveral times and places by law appointed, by one Chief Juſtice and four other Juſtices, each of whom ſhall be an inhabitant of this Commonwealth, of ſobriety of manners and learned in the law, to be appointed and commiſſioned as is by the conſtitution provided; and they, or any three of them, ſhall be a Court and have cognizance of Pleas, real, perſonal and mixed; and of all civil actions between party and party, and between the Commonwealth and any of the ſubjects thereof, whether the ſame do concern the reality and relate to right of freehold, inheritance or poſſeſſion; whether the ſame do concern the perſonality and relate to any matter of debt, contract, damage, or perſonal injury; and alſo all mixed actions which do concern the reality and perſonality, brought legally before the ſame Supreme Judicial Court, by appeal, review, writ of error, or otherwiſe; and in all ſuch actions, real, perſonal and mixed, to give ſuch judgment and award ſuch execution, as the common rules of juſtice and laws of this Commonwealth ſhall direct; and ſhall take cognizance of all capital and other offences and miſdemeanors whatſoever, of a public nature, tending either to a breach of the peace, or the oppreſſion of the ſubject, or raiſing of faction, controverſy, or debate, to any manner of miſgovernment; and of every crime whatſoever that is againſt the public good; and ſhall by virtue of their office, be ſeverally conſervators of the peace throughout the Commonwealth. And upon all perſons duly and legally convicted before the ſaid Court, of crimes, offences, or miſdemeanors, to inflict ſuch puniſhment as by the laws of the Commonwealth is provided. And in caſe of legal conviction, where no puniſhment by ſtatute law is provided, then the ſaid Court ſhall puniſh the perſon ſo convicted, and according to the common uſage and practice within this Commonwealth, not repugnant to the conſtitution, according to the nature of the offence.

Supreme Judicial Court, &c. their conſtitution and power.

II. *And be it further enacted,* That the ſame Supreme Judicial Court may by *certiorari* or other legal methods, cauſe to be brought before them as well indictments or other criminal proſecutions pending in, as the records of ſentences, orders, decrees and judgments of any Court

of

of inferiour criminal juriſdiction, and to proceed, order and award thereon, as ſhall be by law provided and directed. And the ſaid Supreme Judicial Court is empowered to impoſe and adminiſter all oaths, as well thoſe that are neceſſary for promoting juſtice between party and party, as thoſe neceſſary to the conviction and puniſhment of offenders; and to puniſh at the reaſonable diſcretion of the Court, all contempts committed againſt the authority of the ſame: And the ſaid Court ſhall have power to iſſue all writs of prohibition and mandamus, according to the law of the land, to all Courts of inferiour Judiciary Powers, and all proceſſes neceſſary to the furtherance of juſtice, and the regular execution of the laws.

All writs and proceſſes to be in the name of the Commonwealth of *Maſſachuſetts*.

III. *And it is further enacted*, That all writs and proceſſes of the ſame Court, ſhall be in the name of the Commonwealth of *Maſſachuſetts*, bear teſt of the firſt Juſtice who is not a party to the ſuit, and ſhall be under the ſeal of the ſame Court, and ſigned by the Clerk.

The Supreme Judicial Court to regulate the admiſſion of attornies.

IV. *And it is further enacted*, That the ſame Supreme Judicial Court ſhall and may from time to time, make, record and eſtabliſh all ſuch rules and regulations with reſpect to the admiſſion of attornies, ordinarily practicing in the ſaid Court, and the creating of barriſters at law, and all other rules reſpecting modes of trial, and the conduct of buſineſs, as the diſcretion of the ſame Court ſhall dictate. *Provided always*, That ſuch rules and regulations be not repugnant to the laws of the Commonwealth.

Proviſo.

The Juſtices of ſaid Court empowered to adjourn.

In caſe.—

V. *And it is further enacted*, That the Juſtices of the ſaid Supreme Judicial Court, or any three of them, ſhall be empowered to adjourn the ſame Court from time to time, as may be neceſſary to the public good. And when it ſhall ſo happen that any of the Juſtices of the ſaid Court ſhall providentially be detained from attending at the time when the ſame Court by law, or by any previous adjournment is to be held, by means whereof there cannot be a competent Court, any two Juſtices of the ſame Court may by writ under their hands and ſeals, adjourn the ſame Court to ſuch further day as ſhall be expreſſed in the ſame writ, and the Sheriff of the county or his Deputy ſhall read ſuch writ, audibly, in the Court-Houſe, or place where the Court was to be holden, and poſt up an atteſted copy thereof in ſome public and conſpicuous place there, and ſhall cauſe publication to be made of the ſame in ſome other of the moſt public places in the county. And the Juſtices of the Supreme Judicial Court ſhall from time to time appoint a Clerk or Clerks to attend ſaid Court, and to record the proceedings thereof, and to do all other things which ſhall be by law their duty to do, which Clerk or Clerks ſhall be duly ſworn to the faithful performance of their office, and ſhall hold the ſame during the pleaſure of the ſaid Court.

Juſtices of ſaid Court to appoint a Clerk or Clerks.

To be ſworn.

[This act paſſed *July* 3, 1782.]

An

An Act for eſtabliſhing Courts of General Seſſions of the Peace.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there ſhall be held in each county in this Commonwealth, at the times and places by law appointed, a Court of General Seſſions of the Peace, by the Juſtices of each county, who are hereby empowered to hear and determine all matters relative to the conſervation of the peace, and the puniſhment of ſuch offences as are cognizable by them at common law, or by the acts and laws of the Legiſlature, and to give judgment, order, or ſentence thereon, as the law directs, and to award execution accordingly.

General Seſſions of the Peace, their conſtitution and power.

II. *And be it further enacted by the ſame authority,* That the warrants and proceſſes of the ſaid Court of General Seſſions of the Peace, for the apprehending and bringing to trial any perſon againſt whom an indictment is found, or a complaint filed in the ſame Court, for any crime whereof the ſame Court hath cognizance, ſhall be under the ſeal of the Court, ſhall be ſigned by their Clerk, and run into, and be executed in any county of the Commonwealth.

Warrants and proceſſes to be under the ſeal of the Court, ſigned by the Clerk.

III. *And be it further enacted,* That any perſon againſt whom a ſentence ſhall be given in the Court of General Seſſions of the Peace, may appeal therefrom unto the Supreme Judicial Court, then next to be holden within or for the ſame county. *Provided,* That no appeal ſhall be granted, unleſs it be claimed at the time of declaring the ſentence, and unleſs the appellant ſhall, before the riſing of the Court, recognize to the Commonwealth, and where by the ſentence a forfeiture accrues to a ſubject, to him, in a reaſonable ſum, with ſurety or ſureties, for his perſonal appearance, at the Court appealed to, and for the proſecution of his appeal there with effect, and to abide the ſentence therein given, and to keep the peace, and be of good behaviour in the mean time; and the party appealing ſhall be in cuſtody until he ſhall ſo recognize; and the party appealing ſhall produce at the Court appealed to, a copy of the ſentence given againſt him, with a copy of all other proceedings had in the cauſe, and ſhall enter his appeal, and pay all ſuch fees in the ſaid Supreme Court as ſhall be by law provided in other cauſes: And if he ſhall fail in the proſecution of his appeal, or in any of the particulars beforementioned, his recognizance ſhall be forfeited; and the Supreme Judicial Court ſhall award ſuch ſentence againſt him, for the offence whereof he is charged, as they ought to do in caſe he ſtood convicted by verdict of a Jury in ſaid Court; and may grant a capias to bring him into Court to receive ſuch ſentence.

Appeal from the ſentence to the Supreme Judicial Court.

Proviſo.

IV. *And be it further enacted by the authority aforeſaid,* That the ſaid Court of General Seſſions of the Peace, ſhall have power to adjourn the ſame from time to time as may be neceſſary for the public good; and to appoint a Clerk to attend ſaid Court, and to record the proceedings thereof; which Clerk ſhall be duly ſworn to the performance of the duties of his office; and ſhall hold the ſame during the pleaſure of the ſaid Court.

The Court empowered to adjourn, and to appoint a Clerk, to be under oath.

[This act paſſed *July* 3, 1782.]

An Act eſtabliſhing Courts of Common Pleas.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there ſhall be held and kept within each county of this Commonwealth, at the times and places by law appointed, a Court of Common Pleas, by four ſubſtantial, diſcreet and learned perſons, each of whom to be an inhabitant of the county wherein he ſhall be appointed; which perſons ſhall be appointed and commiſſioned by the Governour, as is provided by the Conſtitution, and they, or any three of them, ſhall be a Court, and have cognizance of all civil actions of the value of more than *forty ſhillings*, ariſing or happening within their county, triable by common or ſtatute law, of what nature or ſpecies ſoever the ſame may be, and ſhall be fully empowered, when qualified as the conſtitution directs, to give judgment and award execution accordingly, and to adminiſter all neceſſary oaths, and to do and order whatſoever by the conſtitution and laws ſhall be their duty to do. And all writs and proceſſes iſſuing from the ſeveral Courts of Common Pleas, ſhall be in the name of the Commonwealth of *Maſſachuſetts*, bear teſt of the firſt Juſtice who is not a party, and be under the ſeal of the Court, and ſigned by the Clerk thereof, and ſhall have force, be obeyed and executed in every county within the Commonwealth. And all original proceſſes in the ſaid Courts ſhall be ſummons, capias or attachment, which ſhall be ſerved and executed fourteen days before the day of the ſitting of the Court whereinto they are returnable.

Inferiour Courts Conſtitution & Power.

All writs & proceſſes to be in the name of the Commonwealth of Maſſachuſetts

And to be ſummons, capias or attachments.

II. *And be it further enacted*, That any party aggrieved at the judgment of the Court of Common Pleas, upon any action, may appeal therefrom to the next Supreme Judicial Court to be held within or for the ſame county; and the party ſo appealing, before his appeal ſhall be allowed, ſhall recognize to the adverſe party, in a reaſonable ſum to proſecute his appeal with effect, and to pay all intervening damages and coſt; and no execution ſhall be iſſued by the Court of Common Pleas upon the judgment appealed from.

Parties aggrieved may appeal to the Supreme Judicial Court.

III. *And be it enacted*, That the appellant ſhall produce at the Court appealed to, atteſted copies of the writ, judgment, and all papers and evidence filed in the caſe at the Common Pleas; and if any appellant ſhall neglect to produce ſuch copies, or ſhall fail to proſecute his appeal, the Supreme Judicial Court ſhall, upon complaint thereof made by the appellee, affirm the former judgment with additional damages and coſt. And the Juſtices of the ſaid Court of Common Pleas ſhall have power from time to time to make and eſtabliſh all neceſſary rules for the orderly conducting of buſineſs in the ſame Court, provided ſuch rules are not repugnant to the laws of the Commonwealth, or to thoſe rules eſtabliſhed by the Supreme Judicial Court.

Appellants to produce atteſted copies of the writs.

Upon neglect of the Appellant.

Juſtices to eſtabliſh neceſſary rules for buſineſs.

IV. *And be it further enacted by the authority aforeſaid*, That the Court of Common Pleas ſhall have power to adjourn the ſame from time to time, as may be neceſſary for the public good. And when it ſhall ſo happen that any of the Juſtices of the ſaid Court

The ſaid Court to have power to adjourn.

ſhall be deceaſed, or ſhall be providentially detained from attending at the time and place at which ſaid Court by law, or by any previous adjournment was to have been held, by means whereof there cannot be more than two of the ſaid Juſtices preſent, then and in ſuch caſe any two of the Juſtices of the ſame Court being there preſent, ſhall by writ under their hands and ſeal, adjourn the ſame Court unto a further day, expreſſed in ſuch writ; and the ſheriff of the county, or his deputy, ſhall read the ſame writ in the Court-Houſe or place where ſuch Court was to have been holden, and ſhall place an atteſted copy of the ſame writ up in ſome publick and conſpicuous place there, and ſhall cauſe publication thereof to be made in ſome other of the moſt publick places in the county. And the Juſtices of the ſaid Court of Common Pleas, ſhall have power from time to time to appoint a Clerk to attend them, and record their proceedings; which Clerk ſhall be under oath to the faithful performance of the duties of his office, and ſhall hold his office during the pleaſure of the ſaid Court.

In caſe.

The Juſtices empowered to appoint a Clerk. Said Clerk to be under oath.

The time for the Petit-Jurors to give their attendance.

V. *And be it further enacted*, That the Petit-Jurors in the Court of General Seſſions of the Peace and Court of Common Pleas, to be held within and for the county of *Suffolk*, ſhall not be obliged to give their attendance until the ſecond Tueſday of ſaid Court's ſitting; and at the ſaid Courts to be held in all other counties, upon the ſecond day of the ſaid Court's ſitting, and venires ſhall be iſſued accordingly.

No action to be entered after the firſt day of the ſitting of ſaid Court.

VI. *And it is alſo enacted*, That no action ſhall be entered at any Court of Common Pleas after the firſt day of the ſitting thereof; and all pleas in abatement to the writ, and demurrers to declarations, ſhall be made, ſigned, and filed before the Jury is empannelled.

Proviſo.

Provided nevertheleſs, That where by any inevitable misfortune or accident, the plaintiff ſhall be prevented from entering his action upon the firſt day of the Court's ſitting, he may, upon making the ſame appear to the Court, enter his action at any time before judgment is given for coſt to the defendant.

[This act paſſed *July* 3, 1782.]

An Act for appointing Special Juſtices of the Courts of Common Pleas.

Preamble.

WHEREAS by an act made and paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-two, entitled, "An act eſtabliſhing Courts of Common Pleas," it is provided and enacted, that there ſhall be held and kept within each county of this Commonwealth, at the times and places by law appointed, a Court of Common Pleas, by four ſubſtantial, diſcreet and learned perſons, each one of whom to be an inhabitant of the county wherein he is appointed; but no proviſion is made for the appointment of ſpecial Juſtices to ſit in and hold the ſaid Court, when any of the ſtanding Juſtices thereof ſhall be intereſted or neceſſarily abſent: Be

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That there ſhall from time to time be a ſuitable number of ſpecial Juſtices of the Courts of Common Pleas, appointed by the Governour, with the advice and conſent of Council, as the conſtitution directs, each one of whom to be an inhabitant of the county for which he may be appointed; and when it ſhall ſo happen that ſo many, not exceeding two, of the ſtanding Juſtices of the Court of Common Pleas ſhall be abſent at the time appointed by law for holding the ſaid Court, or at any adjournment of the ſame in any county, ſo that there cannot be a quorum of the ſtanding Juſtices of the ſame Court to proceed to buſineſs, then and in ſuch caſe, the ſenior ſpecial Juſtice of the ſaid county preſent, ſhall ſit in the room of one of thoſe abſent, with the two of the ſtanding Juſtices preſent, and ſhall have all the powers and authorities in ſuch caſe, as a ſtanding Juſtice hath by the laws of the State.

Governour, with advice of Council, to appoint ſpecial juſtices.

Power of a ſenior ſpecial Juſtice.

II. *And be it further enacted,* That when all the ſtanding Juſtices of the Court of Common Pleas within any county, ſhall be parties in a cauſe at the time of bringing the ſuit, the writ ſhall bear teſt of the name of the ſenior ſpecial Juſtice of the county; and when all the ſaid ſtanding Juſtices ſhall be intereſted in the event of any ſuit brought in the Court whereof they are Juſtices, and thereby ſhall be rendered unſuitable to ſit and give judgment in ſuch ſuit, then the three ſenior ſpecial Juſtices preſent, who ſhall not be intereſted in the event of each ſuit, ſhall take the ſeat of Juſtice, and have all the power and authority in ſuch ſuit, as the ſtanding Juſtices have in any other caſe; and when ſuch cauſe ſhall be decided, the ſtanding Juſtices ſhall re-aſſume their ſeat, and proceed to the other buſineſs of the county, without any formalities of opening the Court anew. And when ſo many of the ſtanding Juſtices of the Court of Common Pleas in any county, ſhall be intereſted in the event of any ſuit, or related to any perſon intereſted therein, and thereby ſhall be rendered unſuitable to ſit and give judgment in ſuch ſuit, then in ſuch caſes ſo many of the ſenior ſpecial Juſtices preſent, as may be neceſſary to make a quorum of the ſaid Court, ſhall take the ſeat of Juſtice, and with him or them who are not intereſted in ſuch ſuit, or related to any perſon intereſted therein, ſhall proceed to try the cauſe whereon ſuch ſuit is brought, and give judgment in the ſame manner as the Court of Common Pleas are authorized to do in other ſuits.

Writ to bear teſt of his name when all the ſtanding Juſtices ſhall be parties.

The three ſenior ſpecial Juſtices to ſit when all the Juſtices are intereſted.

And ſo many of them as ſhall make a quorum where only a part of the ſtanding Juſtices are intereſted.

[This act paſſed *March* 16, 1784.]

An Act for carrying into Execution, an Ordinance of Congreſs for eſtabliſhing Courts for the Trial of Felonies and Piracies committed on the High Seas.

WHEREAS by an ordinance of Congreſs, paſſed the fifth of April, *one thouſand ſeven hundred and eighty-one, purſuant to the ninth article of the confederation, the Juſtices of the Supreme Judicial*

Preamble.

dicial Court and the Judge of Admiralty of this Commonwealth, or any two of them, are conſtituted and appointed Judges for hearing and trying every perſon charged with piracy or felony upon the high ſeas, or who ſhall be charged as acceſſaries to the ſame, either before or after the fact, by grand and petit Jurors, according to the courſe of the common law. And it being expedient to aſcertain the times and places for holding the ſame Court, as well as to direct the mode of appointing grand and petit Jurors therefor; and alſo to deſignate the Judge of Admiralty intended by the ſame ordinance:

The time and places for holding Courts for the trial of piracies, &c.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the times and places for holding Courts, for the trial of piracies and felonies committed on the high ſeas, ſhall be in the counties of *Suffolk, Middleſex, Eſſex, Plymouth, Barnſtable, Briſtol, York* and *Cumberland*, at the times the Supreme Judicial Court is or ſhall by law be held and kept in the ſaid ſeveral counties, and at ſuch other time and place in any maritime town in any of the ſaid counties, as the Governour for the time being, with advice of Council, ſhall, by writ under the ſeal of the Commonwealth, order and direct; at which Courts the firſt Juſtice of the Supreme Judicial Court who is preſent ſhall always preſide.

Grand and petit Jurors appointed to ſerve in the Court for the trial of piracies.

II. *And be it further enacted,* That the grand and petit Jurors that are or ſhall be appointed to ſerve at any Supreme Judicial Court, in the ſeveral counties aforeſaid, ſhall diſcharge the duties of grand and petit Jurors, in the Court for the trial of piracies and felonies upon the high ſeas, as fully as though ſpecially appointed for that purpoſe.

Governour and Council to appoint the time and place for trial.

The Clerk of the Supreme Judicial Court to iſſue venires as the Juſtices ſhall direct.

III. *And be it further enacted,* That when a time and place ſhall be appointed for the trial of piracies and felonies on the high ſeas, by the Governour and Council, by virtue of this act, the writ directed to the Judges of the ſame Courts ſhall iſſue twenty-one days at the leaſt before the time aſſigned for holding the Court. And the Clerk of the Supreme Judicial Court ſhall iſſue venires to ſuch maritime towns within the Commonwealth as the Juſtices of the ſaid Court, or any two them, ſhall direct, ſeven days at leaſt before the ſitting thereof; and the grand and petit Jurors ſhall be appointed and ſummoned to attend in like manner, and be liable to the like fines and forfeitures for neglects, as grand and petit Jurors reſpectively, at the Supreme Judicial Court: And if by reaſon of challenges, or otherwiſe, there ſhall not remain a ſufficient number of grand or petit Jurors, the number may be compleated *de talibus circumſtantibus*, to be returned by the ſheriff of the county where the Court is held, or ſuch other perſon as the Court ſhall direct.

Judges of the maritime Courts to be deemed as Judges of the Court of admiralty, until, &c.

IV. *And be it further enacted,* That the Judge or Judges of the maritime Courts within this Commonwealth for the time being, ſhall be deemed and taken to be the Judges of the Court of Admiralty within this Commonwealth, in the true ſenſe and meaning of the ſaid ordinance of Congreſs, until a Judge or Judges of Admiralty, expreſsly by that name, ſhall, purſuant to law, be duly nominated, commiſſioned and ſworn.

V.

V. *And be it further enacted by the authority aforeſaid*, That the Clerk of the Supreme Judicial Court ſhall be the Clerk of the Court for the trial of piracies and felonies on the high ſeas, unleſs the Judges of the ſame Court ſhall ſee fit to appoint ſome other perſon to act as Clerk of the ſame, which they are hereby authorized and empowered to do.

Clerk to ſaid Court.

[This act paſſed *February* 25, 1783.]

An Act deſcribing the Power of Juſtices of the Peace in civil Actions.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That all manner of debts, treſpaſſes, and other matters not exceeding the value of *four pounds*, (and wherein the title of real eſtate is not in queſtion) ſhall, and may be heard, tried, adjudged, and determined by any Juſtice of the Peace within his county, and the Juſtices are ſeverally empowered to grant ſummons, capias and attachment, at the requeſt of any perſon applying for the ſame, directed to ſome proper officer within the ſame county, empowered by law to execute the ſame. And ſuch ſummons or capias and attachment ſhall be duly ſerved by ſuch officer, ſeven days at the leaſt before the day therein ſet for trial, otherwiſe the party ſued ſhall not be held to anſwer thereon; and if after ſuch proceſs ſhall be duly ſerved, the party ſued, after being duly called, ſhall not appear to anſwer to the ſame ſuit, the charge againſt him in the declaration ſhall be taken to be true, and the Juſtice ſhall give judgment againſt him for ſuch damages as he ſhall find the plaintiff to have ſuſtained, with coſts; and if the perſon ſued ſhall appear to defend the ſuit or oppoſe the ſame, the Juſtice ſhall award ſuch damages as he ſhall find the plaintiff to have ſuſtained. *Provided*, That no more damages than the ſum of *eighty ſhillings* ſhall be awarded in any action originally brought or tried before a Juſtice of the Peace; but if the plaintiff ſhall not ſupport his action, ſhall fail to proſecute or become non-ſuit, the Juſtice ſhall award to the party ſued, his reaſonable coſts, taxed as the law directs. And upon all judgments given by a Juſtice of the Peace in civil actions, he ſhall award execution thereon in form by law preſcribed.

Debts, treſpaſſes, and other matters, not exceeding four pounds, to be tried by Juſtices of the Peace.

Juſtices empowered to grant ſummons, &c.

Summons, &c. to be ſerved ſeven days before trial.

In caſe of non-appearance, Juſtices to give judgment.

Proviſo.

II. *And be it further enacted*, That when an action of treſpaſs ſhall be brought before any Juſtice of the Peace, and the defendant ſhall plead the general iſſue, he ſhall not be allowed to offer any evidence that may bring the title of real eſtate in queſtion. And when the defendant in any ſuch action ſhall plead the title of himſelf or any other perſon in juſtification, the Juſtice, upon having ſuch plea filed, ſhall order the defendant to recognize to the adverſe party, in a reaſonable ſum, with ſufficient ſurety or ſureties, to enter the ſaid action at the next Court of Common Pleas to be holden within the ſame county, and to proſecute the ſame, in the ſame manner as upon an appeal from a Juſtice's judgment; and if ſuch

In action of treſpaſs before a Juſtice of the Peace, if the defendant ſhall plead the title of himſelf, cauſe to be removed, & bond given.

pleader ſhall refuſe ſo to recognize, the Juſtice ſhall render judgment againſt him in the ſame manner as if he had refuſed to make anſwer to the ſame ſuit. And either party in ſuch cauſe ſhall be allowed to appeal from the judgment of the Court of Common Pleas, in the ſame manner as if the ſuit had been originally commenced there. And every Juſtice of the Peace ſhall have power by publick proclamation to adjourn the trial of any action brought before him, from time to time, when equity may require it; but he ſhall not be of council to either party, or undertake to adviſe or aſſiſt any party in ſuit before him.

Upon refuſal to recognize, the Juſtice to render judgment.

Parties allowed to appeal.

III. *And be it further enacted*, That each Juſtice of the Peace ſhall keep a fair record of all his proceedings; and when any Juſtice of the Peace ſhall die before a judgment given by him is paid and ſatisfied, it ſhall be in the power of any Juſtice of the Peace in the ſame county to grant a *ſcire facias* upon the ſame judgment, to the party againſt whom ſuch judgment was rendered up, for him to ſhew cauſe, if any he hath, why execution ſhould not be iſſued againſt him. And although the coſt and debt awarded by the deceaſed Juſtice, when added together, ſhall amount to more than *eighty ſhillings*, it ſhall be no bar upon ſuch *ſcire facias*, but judgment ſhall be given thereon for the whole debt and coſt, together with the coſt ariſing upon the *ſcire facias*. *Provided always*, That either party may appeal from the judgment as in other perſonal actions, where judgment is given by a Juſtice of the Peace. And every Juſtice of the Peace who ſhall have complaint made to him, that a judgment given by a Juſtice of the ſame county, then deceaſed, remains unſatisfied, ſhall iſſue his ſummons to the perſon in whoſe poſſeſſion the record of the ſame judgment is, directing him to bring and to produce to him the ſame record; and if ſuch perſon ſhall contemptuouſly refuſe to produce the ſame record, or ſhall refuſe to be examined reſpecting the ſame, upon oath, the Juſtice may puniſh the contempt by impriſonment until he ſhall produce the ſame, or until he ſubmits to be examined as aforeſaid; and when the Juſtice is poſſeſſed of ſuch record, he ſhall tranſcribe the ſame upon his own book of records, before he ſhall iſſue his *ſcire facias*, and ſhall deliver the original back again to the perſon who ſhall have produced it, and a copy of ſuch tranſcription, atteſted by the tranſcribing Juſtice, ſhall be allowed in evidence in all caſes where an authenticated copy of the original might be received.

Juſtices to keep a fair record of their proceedings.

Proviſo.

IV. *And it is further enacted*, That when an executor or adminiſtrator ſhall be guilty of committing waſte, whereby he is rendered unable to pay the judgment recovered before any Juſtice of the Peace, againſt the goods and eſtate of the deceaſed in his hands, out of the ſame, the Juſtice may proceed againſt the proper goods and eſtate of ſuch executor or adminiſtrator, in the ſame manner as the Court of Common Pleas are empowered to do.

Executors, &c. committing waſte, the Juſtice to proceed againſt their goods and eſtate.

V. *It is alſo enacted*, That each Juſtice of the Peace may grant *ſubpœnas* for witneſſes in all civil actions and cauſes pending before the Supreme Judicial Court, Court of Common Pleas, Court of General Seſſions of the Peace, and before him, or any other Juſtices, and in all civil actions and cauſes pending before arbitrators or referees.

Juſtices to grant ſubpœnas for witneſſes.

VI. *And be it further enacted*, That any party aggrieved at the judgment of any Juſtice of the Peace in a civil action, where both parties have appeared and plead, may appeal therefrom to the next Court of Common Pleas to be held within the ſame county; and ſhall, before his appeal is allowed, recognize with a ſurety or ſureties in ſuch reaſonable ſum as the Juſtice ſhall order, not exceeding *ten pounds*, to pay all intervening damages and coſts, and to proſecute his appeal with effect, and ſhall be held to produce a copy of the whole caſe at the Court appealed to, and both parties ſhall be allowed to offer any evidence upon the trial at the Common Pleas, in the ſame manner as if the cauſe had been originally commenced there. And no other appeal or review ſhall be had on ſuch action, after one trial at the Court of Common Pleas. And the Court of Common Pleas, when any perſon recognized as beforementioned to bring forward an action of treſpaſs, doth neglect to do it, upon complaint thereof made in writing by the plaintiff, ſhall give judgment for ſuch ſum in damages as the plaintiff hath declared for, together with all reaſonable coſts which accrued both in the ſame Court, and before the Juſtice. And the Court of Common Pleas ſhall, when any appellant thereto ſhall fail to proſecute his appeal, or if he ſhall neglect to produce a copy of the caſe, affirm the former judgment upon the appellee's complaint, and award ſuch additional damages as ſhall have ariſen in conſequence of the ſaid appeal and coſt.

Party aggrieved to appeal.

Party appealing to bring the whole caſe.

VII. *Be it further enacted by the authority aforeſaid*, That in all civil actions triable before a Juſtice of the Peace, except ſuch actions of treſpaſs wherein the defendant means to avail himſelf, by pleading the title of himſelf or any other perſon under whom he claims in juſtification of the treſpaſs or treſpaſſes alledged to be committed on real eſtate; the defendant ſhall be entitled to all evidence under the general iſſue, which by law he might avail himſelf of under any ſpecial plea in excuſe or juſtification; any law, uſage, or cuſtom, to the contrary notwithſtanding.

In all civil actions triable before a Juſtice of the Peace, except.

The defendant to be intitled to all evidence under the general iſſue.

VIII. *Be it further enacted by the authority aforeſaid*, That no action ſhall be ſuſtained in any Court of Common Pleas within this Commonwealth, where the damage demanded ſhall not exceed the ſum of *four pounds*, unleſs by an appeal from a Juſtice of the Peace, ſaving ſuch actions wherein the title to real eſtate may be concerned; and if upon any action originally brought before the Court of Common Pleas, judgment ſhall be recovered for no more than *four pounds*, debt or damage, in all ſuch caſes the plaintiff ſhall be entitled for his coſts, to no more than one quarter part of the amount of the debt or damage ſo recovered.

No action to be ſuſtained where the damage demanded ſhall not exceed the ſum of four pounds, unleſs.

IX. *Provided nevertheleſs, and be it further enacted by the authority aforeſaid*, That all actions already commenced, or which may be commenced before the firſt day of *June* next, ſhall be proceeded upon, heard, and determined in the ſame manner as they might have been before the paſſing of this act, any thing herein to the contrary notwithſtanding.

Proviſo.

[This act paſſed *March* 11, 1784.]

An Act veſting certain Powers in Juſtices of the Peace in criminal Caſes.

Duty of Juſtices of the Peace.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That it ſhall be within the power, and be the duty of every Juſtice of the Peace within his county, to puniſh by ſuch fine as is by the ſtatute law of the Commonwealth provided, all aſſaults and batteries that are not of a high and aggravated nature, and to cauſe to be ſtayed, and arreſted all affrayers, rioters, diſturbers and breakers of the peace, and to bind them by recognizance to appear at the next Supreme Judicial Court, or Court of General Seſſions of the Peace, to be held within or for the ſame county, at the diſcretion of the Juſtice; and alſo to require ſuch perſons to find ſureties for their keeping the peace, and being of good behaviour until the ſitting of the Court they are to appear before, and to commit ſuch perſons as ſhall refuſe ſo to recognize and find ſuch ſurety or ſureties. And the Juſtices of the Peace ſhall examine into all homicides, murders, treaſons, and felonies done and committed in their counties, and commit to priſon all perſons guilty or ſuſpected to be guilty of manſlaughter, murder, treaſon or other capital offence. And to hold to bail all perſons guilty or ſuſpected to be guilty of leſſer offences which are not cognizable by a Juſtice of the Peace, and require ſureties for the good behaviour of dangerous and diſorderly perſons; and ſhall take cognizance of, or examine into all other crimes, matters and offences, which by particular laws are put within their juriſdiction.

Juſtices to grant ſubpænas for witneſſes.

II. *And it is alſo enacted by the authority aforeſaid,* That Juſtices of the Peace within their reſpective counties, be, and they are hereby authorized and empowered, to grant *ſubpænas* for witneſſes in all criminal cauſes pending before the Supreme Judicial Court, and Court of General Seſſions of the Peace, and before themſelves or any other Juſtice. And all ſheriffs, conſtables and other officers, are directed and empowered, to ſerve any warrant iſſuing from a Juſtice of the Peace; and each Juſtice ſhall have authority to command the aſſiſtance of every ſheriff, deputy-ſheriff, conſtable, and all other perſons preſent at any affray, riot, aſſault or battery, and may fine any perſon refuſing ſuch aſſiſtance, in a ſum not exceeding *forty ſhillings*, to be diſpoſed of for the uſe of the town where the offence ſhall be commited, and levied by warrant of diſtreſs on the offender's goods and chattles, and for want thereof, on his body.

Perſons aggrieved allowed an appeal from the ſentence of any Juſtice to the Court of Seſſions.

III. *And be it further enacted by the authority aforeſaid,* That any perſon aggrieved at the ſentence given againſt him by any Juſtice of the Peace, may appeal therefrom to the next Court of General Seſſions of the Peace, to be held within the ſame county, and ſhall, before his appeal is granted, recognize to the Commonwealth, in ſuch reaſonable ſum, not leſs than *five pounds*, as the Juſtice ſhall order, with ſufficient ſurety or ſureties for his proſecuting his appeal, and ſhall be held to produce the copy of the whole proceſs, and of

all

all writings filed before the Juſtice at the Court appealed to. And if he ſhall not there proſecute his appeal, and produce the copies as aforeſaid, the Court ſhall order his default to be noted upon their record, and ſhall certify the ſame recognizance with the record of the default in the performance of the condition thereof, to the Court of Common Pleas, to the intent that a *ſcire facias* may be thereupon iſſued for the recovery of the penalty. And the ſaid Court of General Seſſions of the Peace, may order the ſame caſe to be laid before the Grand Jury, or may iſſue an attachment againſt the body of ſuch appellant, and cauſe him thereby to be brought before them, and when he is ſo in Court, ſhall affirm the ſentence of the Juſtice againſt him with all additional coſts.

Perſons failing to proſecute their appeal, how to be proceeded againſt.

IV. *And be it further enacted*, That the Juſtices of the Peace ſhall account annually with the Treaſurer of the Commonwealth, the Treaſurer of their reſpective counties, and the town Treaſurer, as the caſe may be, for all fines by them received or impoſed, upon pain of forfeiting the ſum of *ten pounds*, to be ſued for and recovered by the Treaſurer of the Commonwealth, the county or town Treaſurer for the time being, to which the ſaid fines may reſpectively belong.

Juſtices of the Peace to account annually for all fines received.

[This act paſſed *March* 16, 1784.]

An Act to confirm the Doings of Juſtices of the Peace, whoſe Commiſſions have expired, or may hereafter expire, and be again renewed.

WHEREAS by the conſtitution of this Commonwealth, the commiſſions of Juſtices of the Peace, expire at the end of ſeven years; and whereas it has heretofore happened, and may hereafter ſo happen, that much buſineſs which has been, or may be began by them in the execution of the duties of their office, and the buſineſs ſo begun by them has not been or may not be compleated, and carried into full execution, before the expiration of the ſaid term of their commiſſions; and as doubts have ariſen whether ſuch actions, doings and proceedings, can ſurvive and remain valid after the expiration of the term of ſuch former commiſſions, and be again re-aſſumed and proceeded upon, after ſuch commiſſions have or ſhall be renewed:

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That all ſuch actions, doings and proceedings of Juſtices of the Peace within this Commonwealth, which have been re-aſſumed and carried into execution ſince the renewal of their ſaid commiſſions, be, and they hereby are confirmed and rendered valid, to all legal intents, as fully as if the commiſſions, under authority whereof they originated, had continued in force, until the final iſſue of ſuch actions and proceedings aforeſaid.

Proceedings of Juſtices confirmed and rendered valid.

II. *And be it further enacted by the authority aforeſaid*, That all Juſtices of the Peace as aforeſaid, before whom actions may be

commenced under former commiſſions, and ſuch commiſſions have or ſhall expire before judgment has been or ſhall be rendered thereon, or judgment being rendered, the ſame remains in whole or in part unſatisfied, ſuch Juſtices of the Peace, who have heretofore or ſhall hereafter have their ſaid commiſſions ſeaſonably renewed, and being duly qualified agreeably to the conſtitution of this Commonwealth, to act under ſuch commiſſions, be, and they hereby are authorized and empowered, to render judgment and iſſue execution on all ſuch actions, commenced as aforeſaid, in the ſame manner as if the commiſſions under which ſuch actions were or may be commenced, were in full force.

[This act paſſed *June* 20, 1788.]

An Act for eſtabliſhing Courts of Probate.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That a Court of Probate ſhall be held within the ſeveral counties in this Commonwealth, and there ſhall be in the manner the conſtitution directs, ſome able and learned perſon in each county within this Commonwealth, appointed or to be appointed Judge for taking the Probate of Wills, and granting adminiſtrations on the eſtates of perſons deceaſed, being inhabitants of, or reſident in the ſame county at the time of their deceaſe; for appointing guardians to minors, ideots, and diſtracted perſons; for examining and allowing the accounts of executors, adminiſtrators or guardians; and for ſuch other matters and things, as the Courts of Probate within the ſeveral counties ſhall, by the laws of the Commonwealth, have cognizance and juriſdiction of; who ſhall have full power and authority to make out ſuch proceſs or proceſſes, as may be needful for the diſcharge of the truſt repoſed in him; and all ſheriffs, deputy ſheriffs, and conſtables, are required, duly to ſerve and execute all legal warrants or ſummons to them directed by any Judge of Probate. And contempt of authority in any cauſe or hearing before any Judge of Probate, ſhall and may be puniſhed in like manner, as ſuch contempt of authority in any Court of Common Pleas may, or can by law be puniſhed.

Court of Probate to be held within the ſeveral counties.

Judge of Probate to be appointed.

Sheriffs required to ſerve legal warrants of any Judge of Probate.

II. *And be it further enacted,* That there ſhall be in manner as the conſtitution directs, a ſuitable perſon in each county within this Commonwealth, appointed or to be appointed Regiſter of wills, adminiſtrations, accounts, decrees, orders, determinations, and other writings which ſhall be made, granted, or decreed upon by the Judges of Probate of Wills, in their reſpective counties, which Regiſter ſhall be ſworn to the faithful performance of the duties of his office, and have the care, cuſtody, and keeping of all files, papers and books, to the Probate Office belonging; and in caſe of the death, ſickneſs, or neceſſary abſence of the Regiſter, it ſhall and may be lawful for the Judge of Probate to nominate and appoint ſome meet perſon to officiate as a Regiſter, to be ſworn as aforeſaid,

Regiſter of wills to be appointed.

To be ſworn.

aforeſaid, until the ſtanding Regiſter ſhall be able to attend his duty, or until a new one ſhall be appointed by the Governour and Council.

Supreme Judicial Court to be the Supreme Court of Probate.

III. *Be it further enacted*, That the Supreme Judicial Court ſhall be the Supreme Court of Probate within this Commonwealth, who ſhall have the appellant juriſdiction of all matters determinable by the Judges of Probate in their reſpective counties; and all appeals from any order or decree of a Judge of Probate which ſhall be made after the paſſing of this act, ſhall be to the ſaid Court accordingly; and that the ſaid Supreme Court of Probate ſhall alſo have cognizance in the firſt inſtance of all matters wherein the Judge of Probate of any county is a party, or intereſted.

An appeal allowed.

Proviſo.

IV. *And be it further enacted*, That any perſon aggrieved at any order, ſentence, decree, or denial of any Judge of Probate in any county within this Commonwealth, may appeal therefrom to the Supreme Court of Probate aforeſaid: *Provided*, The appeal be claimed within one month from the time of making ſuch order, ſentence, decree, or denial, and bonds be given and filed in the Probate Office by the appellant, within ten days after ſuch appeal ſhall be claimed and granted, for the proſecution thereof to effect, at the next Supreme Court of Probate, and for paying all intervening coſts and damages, and ſuch coſts as the Supreme Court of Probate, ſhall tax againſt him. And ſuch appeal ſhall be taken notice of, and proceeded upon at the term of the Supreme Judicial Court, which ſhall be holden next after the expiration of twenty days after ſuch appeal ſhall be made, within and for the county where ſuch order, ſentence, decree, or denial was made; and the appellant ſhall file the reaſons of appealing in the Probate Court appealed from, within ten days after the ſecurity is given, and ſhall ſerve the adverſe party or parties with an atteſted copy of ſuch reaſons, fourteen days at leaſt before the ſitting of the ſaid Supreme Court of Probate, at which the trial is to be had. And when it ſhall appear from the reaſons of appeal, that the ſanity of the teſtator or the atteſtation of the witneſſes in his preſence as the law directs, is the queſtion in controverſy on any will or codicil, the ſaid Supreme Court of Probate may, for the determination thereof, direct a real or feigned iſſue to be tried before a jury in the ſame Court, at the expence of the appellant, in caſe the iſſue be found againſt him. And in caſe the party or parties appealing, fail in the proſecution of the ſaid appeal to effect, then the adverſe party, or any perſon intereſted in the ſentence or decree ſo appealed from, ſhall have the benefit of the ſame, by filing a complaint before the Supreme Court of Probate, in like manner, as is provided by law for affirming the judgment of the Court of Common Pleas in the Supreme Judicial Court; and the Supreme Court of Probate may aſſeſs reaſonable coſts in all caſes that may be brought before them, by way of appeal from the reſpective Judges of Probate; and in caſe the appellee or appellees ſhall neglect or refuſe to pay the coſts that may be ſo aſſeſſed againſt him or them, the appellant may bring an action of debt therefor, or proſecute the bonds given for appealing. *Provided always*, That any perſon beyond ſea, or out of the United States,

Time when the appeal ſhall be taken notice of.

Appellant to file the reaſons in the Probate Court.

Party appealing failing to proſecute to effect, adverſe party to have the benefit of the ſame.

Proviſo.

States, who ſhall have no ſufficient attorney within this government at the time of ſuch order, ſentence, decree or denial, ſhall have one month after his or her return, or conſtitution of ſuch attorney, to claim and proſecute their appeal as aforeſaid.

In caſe of an appeal, further proceedings to ceaſe until final determination.

V. *Be it further enacted by the authority aforeſaid,* That whenever there ſhall be an appeal from any order or decree of any Judge of Probate of any county within this Commonwealth, to the Supreme Court of Probate aforeſaid, and the appellant ſhall file in the Probate Office the reaſons of his appeal, and give bonds to proſecute the ſame with effect according to law, and ſhall notify the adverſe party thereof, in that caſe all further proceedings in conſequence of ſuch order or decree, ſhall be ſtayed until a final determination ſhall be had thereon in the ſaid Supreme Court of Probate.

[This act paſſed *March* 12, 1784.]

An Act for regulating the Proceedings on Probate Bonds, in the Courts of common Law; and directing their Form, in the Supreme Court of Probate.

Preamble.

WHEREAS every Judge of the Probate Court, upon granting letters of adminiſtration, upon the eſtate of any perſon deceaſed, is by law directed to take bond to himſelf, and his ſucceſſor in office; and upon putting ſuch bond in ſuit, judgment has been always given in the name of the Probate Judge of the county, for the time being, only; and the having ſuch a judgment ſatisfied by levying execution iſſued thereon, upon the real eſtate of the debtor, when perſonal property cannot be found ſufficient to ſatisfy the ſame, is attended with manifeſt inconveniencies:

Manner of rendering judgment.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That when it ſhall ſatisfactorily appear, upon a hearing in chancery on an adminiſtration bond, for whoſe particular uſe and benefit, the money for which execution iſſues, is to enure; the judgment ſhall be rendered, that the plaintiff in his ſaid capacity (naming him) now have execution for————being part of the penalty forfeited, and coſts taxed at————for the uſe of *A. B.* of *C.* in the county of *S.* (addition) a creditor, or heir of *E. F.* deceaſed, (as the caſe may be.) And the perſon, to whoſe uſe judgment ſhall be rendered, in the name of the Judge of Probate as aforeſaid, may ſue out execution thereon, and have the ſame levied on perſonal or real eſtate, as he may find it neceſſary; and ſhall be deemed, and taken to be the creditor to every intent and purpoſe whatever. And when there are ſeveral perſons, to whoſe uſe the monies recovered on an adminiſtration bond, are to enure, there ſhall be as many ſeparate and diſtinct judgments, in form aforeſaid.

And as a directory, for what ſum execution ought to be awarded, upon an adminiſtration bond, when it ſhall appear upon confeſſion, verdict, demurrer, or otherways, that the penalty is forfeited; and

alſo

alſo that adminiſtration bonds, may not upon frivolous pretences, be put in ſuit:

II. *Be it further enacted by the authority aforeſaid,* That when the ſuit is inſtituted at the deſire of a creditor of the deceaſed, ſuch creditor muſt firſt have his debt or damages aſcertained, by judgment of Court, (unleſs the eſtate is inſolvent) and likewiſe make it appear, that a demand has been made of the adminiſtrator therefor; and that the adminiſtrator has refuſed or neglected to ſatisfy the ſame; or to ſhew goods or eſtate of the deceaſed for that purpoſe. When the eſtate is inſolvent, the creditor muſt produce a copy of the order of diſtribution of the eſtate of the deceaſed, among the creditors, particularly ſpecifying each creditor's claim, and the dividends they are ſeverally entitled unto; and that a demand has been made of the adminiſtrator, for his particular dividend. When an heir has the ſuit brought for his part of the perſonal eſtate, he muſt exhibit a copy of the decree of the Probate Court, aſcertaining its *quantum*; and that he has made a demand thereof upon the adminiſtrator. And in the preceeding inſtances the writ, in addition to the uſual indorſement of the name of the plaintiff or his attorney, ſhall alſo have the name of the perſon or perſons, for whoſe particular uſe and benefit the ſuit is brought, wrote thereon. And when the adminiſtrator ſhall refuſe or neglect to account upon oath, for ſuch property of the inteſtate, as he has received, eſpecially if he has been cited by the Probate Court, for that purpoſe, execution ſhall be awarded againſt him, for the full value of the perſonal property of the deceaſed, that has come to his hands, without any diſcount, abatement or allowance, for charges and expences of adminiſtration or debts paid. And when it ſhall appear that the adminiſtrator ſhall have received the perſonal property of an inteſtate, and ſhall not have exhibited upon oath, a particular inventory thereof, execution ſhall be awarded againſt him, for the whole penalty of ſuch adminiſtration bond, to be diſtributed among the parties intereſted, agreeably to the directions of law. The like judgment, and proceedings, (ſo far as they can with propriety take place) are to be had upon bonds of executors, guardians and others, given to the Judges of the Probate Courts, in their ſaid capacity.

Executions upon adminiſtration bonds, &c. how awarded.

III. *And be it further enacted by the authority aforeſaid,* That all ſuits hereafter brought in the name of any Probate Judge, upon a Probate bond of any kind, ſhall be originally commenced in the Supreme Judicial Court, held within, or for the county, unto which the ſaid Probate Judges reſpectively belong.

Suits hereafter brought, how commenced.

IV. *And be it further enacted by the authority aforeſaid,* That all bonds given in the Supreme Court of Probate, by executors, adminiſtrators or guardians, for the faithful diſcharge of their reſpective truſts, ſhall be to the Commonwealth of *Maſſachuſetts*, for the uſe and benefit of the creditors, heirs, legatees, or wards, as the nature of the bond ſhall require. And all bonds already taken in the ſaid Supreme Court of Probate, in that manner and form, are hereby declared to have been rightly taken. And when bonds taken in the Supreme Court of Probate, in form aforeſaid, ſhall be put in ſuit, the permiſſion of the ſaid Court, ſhall be firſt had therefor: and all ſuch ſuits, ſhall be originally commenced in the Supreme

Bonds given in the Supreme Court of Probate, ſhall be to the Commonwealth.

Judicial Court, and the ſame ſpecies of judgment and modes of chancery, ſhall be had thereon, as in this act is preſcribed and directed to be had, upon bonds given to the Judge of any Probate Court, in ſimilar caſes.

When judgment ſhall be rendered upon any probate bond, and the party ſhall be entitled to a review, execution ſhall be ſuſpended, &c.

V. *And be it further enacted by the authority aforeſaid*, That when judgment ſhall be rendered upon any Probate Bond, againſt the obligors, their executors or adminiſtrators, and the party or parties againſt whom ſuch judgment ſhall be rendered, ſhall by law be intitled to a review thereof, execution ſhall be ſuſpended or ſtayed, in ſuch counties as have but one Supreme Judicial Court annually, for the ſpace of ſix kalendar months, to commence on the day of rendering the judgment; and in ſuch counties as have two Supreme Judicial Courts annually, execution ſhall be ſuſpended, until the next term or ſitting thereof, in the ſame county, to the end, the ſaid obligors, their executors or adminiſtrators, may (if they ſee cauſe) review the ſame; and if a writ of review ſhall not be taken out and ſerved, for reverſing the ſaid judgment, within the time aforeſaid, ſuch obligors, their executors and adminiſtrators, are hereby forever precluded and barred from taking out or proſecuting a writ of review upon ſuch judgment afterwards, and execution may iſſue thereon, any thing contained in the act granting to parties the privilege of reviewing within three years, notwithſtanding. And when the judgment reviewed, ſhall be in the name of the Commonwealth, the ſervice of the writ of review ſhall be made, by reading the ſame, or leaving a copy thereof, with the party or parties, unto whoſe uſe and benefit the ſame judgment enures, if he or they reſide within the government, otherwiſe with the agent or attorney who proſecuted the ſuit, fourteen days at leaſt before the ſitting of the Court where the writ is returnable.

[This act paſſed *February* 15, 1787.]

An Act in Addition to the Act, "for regulating the Proceedings on Probate Bonds, in the Courts of common Law, and directing their Form in the Supreme Court of Probate."

Preamble.

WHEREAS in and by the laſt ſection of the ſaid act, it is enacted, "That when judgment ſhall be rendered, upon any Probate Bond, againſt the obligors, their executors or adminiſtrators, and the party or parties, againſt whom ſuch judgment ſhall be rendered, ſhall by law be entitled to a review thereof, execution ſhall be ſuſpended or ſtayed, in ſuch counties as have but one Supreme Judicial Court annually, for the ſpace of ſix kalendar months, to commence on the day of rendering the judgment; and in ſuch counties as have two Supreme Judicial Courts annually, execution ſhall be ſuſpended until the next term or ſitting thereof, in the ſame county, to the end the ſaid obligors, their executors or adminiſtrators, may (if they ſee cauſe,) review the ſame."—By reaſon of which, all attachments of real or perſonal property, on the original writ, for bringing forward ſuch ſuits, are rendered uſeleſs and ineffectual, for ſatisfying the judgments that may be given therein:

I.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That it ſhall and may be lawful for the party or parties, for whoſe uſe and benefit a judgment, upon any Probate Bond, may be hereafter rendered, (as ſoon as twenty-four hours ſhall be expired, after the judgment ſhall be entered up) to ſue out execution thereupon, any thing in the ſaid recited ſection to the contrary notwithſtanding: Provided the perſon or perſons, ſueing out the ſame execution, ſhall give bond, to the party or parties againſt whom the ſame ſhall iſſue, (and file the bond in Court for his or their uſe) in double the ſum named in the execution, with ſurety or ſureties, to the acceptance of the Court, with condition to refund and pay to him or them, whatever ſum or ſums, ſhall be received or levied by virtue thereof, more than ſufficient to ſatisfy the final judgment, that may be given in his or their favour, upon a writ of review, that may be commenced thereupon, within the time by law limited for ſuch review: And if at the time of rendering the final judgment on the review, it ſhall appear to the Court, that the party or parties, ſueing out execution as aforeſaid, have received or levied thereon, a larger ſum than the final judgment, it ſhall and may be lawful for the ſame Court, and they are hereby authorized and empowered, to enter up judgment in favour of the obligee, for the reſtitution thereof, and thereupon to iſſue execution for the ſame, againſt the ſaid obligors (or ſo many of them, as ſhall be then living) in as full and ample a manner, as though a ſuit was commenced and proſecuted on the ſame bond.

When judgment upon any Probate Bond ſhall be hereafter rendered, the party or parties may ſue out execution, &c.

Proviſo.

II. *And be it further enacted by the authority aforeſaid,* That when any ſuit ſhall hereafter be brought, on a Probate Bond, and the principal obligor named in the bond is living and reſident within the government, and ſhall not be named in the writ, or if named, ſhall not be attached or ſummoned to anſwer thereunto, it ſhall and may be lawful for the Court, at the requeſt of the ſurety or ſureties, that may be attached or ſummoned thereby, to continue the ſame cauſe to the next term, or to ſome diſtant day in the ſame term, if upon a conſideration of the circumſtances attending the ſuit, they ſhall determine ſuch continuance reaſonable or expedient; to the end ſuch ſurety or ſureties may purchaſe out a writ in ſuch form as the ſame Court ſhall direct, for attaching the property, ſecuring the perſon or ſummoning the principal to come in and become a party to the ſuit; and in caſe the principal (after being attached, or ſummoned upon ſuch proceſs, fourteen days, or more, prior to the time of his being directed to appear and anſwer, ſhall not appear and anſwer, the Court are hereby authorized and empowered, to render judgment againſt him, in the ſame way and manner they might have done, had ſuch principal been duly named and legally ſummoned by the original writ, which commenced the ſuit, and he had neglected to appear, or appearing, had neglected to make anſwer thereto.

When ſuits ſhall hereafter be brought on any Probate Bond, ——What proceedings ſhall be had, &c.

III. *And be it further enacted by the authority aforeſaid,* That a law made and paſſed, the eighteenth day of *March*, one thouſand ſeven hundred and eighty-eight, entitled "An Act in addition to, and for explaining an act, paſſed in the year, one thouſand ſeven hundred

Former act repealed.

hundred and eighty-ſeven, entitled "An Act for regulating the proceedings on Probate Bonds, in the Courts of common Law; and directing their form in the Supreme Court of Probate," be, and hereby is repealed.

[This act paſſed *June* 20, 1788.]

An Act for the more ſafe keeping the Records of the ſeveral Courts of Juſtice, and the Records of Deeds within this Government.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That each Clerk of the Supreme Judicial Court, that may hereafter be appointed to that office, ſhall before he enter upon the duties thereof, give bond to the Treaſurer and Receiver-General of this Commonwealth, in a ſum, not leſs than *one hundred*, and not more than *five hundred pounds*, at the diſcretion of the ſaid Supreme Judicial Court, with one or more ſufficient ſureties, for the faithful diſcharge of that truſt, and to keep up the records of the ſaid Court, or ſuch part thereof, as ſhall by the ſaid Court be aſſigned him, ſeaſonably and in good order; and alſo to make and keep convenient and correct alphabets, to the ſaid records.

Clerks of the Supreme Judicial Court hereafter appointed ſhall give bond to the Treaſurer & Receiver General.

II. *And be it further enacted by the authority aforeſaid,* That the Clerks of the ſeveral Courts of General Seſſions of the Peace, and of the ſeveral Courts of Common Pleas, and the Regiſters of the ſeveral Probate Courts, the Regiſters of the Maritime Court, or Court of Admiralty, within this government, that may hereafter be appointed to that office, ſhall before they enter upon the duties of their ſaid reſpective offices, ſeverally give bond to the Treaſurer of the county to which they ſeverally belong, in a ſum not leſs than *fifty* or more than *three hundred pounds*, at the diſcretion of the Court to which they officiate, with one or more ſufficient ſureties, for the faithful diſcharge of their truſt; and for keeping up ſeaſonably and in good order the records of the ſame Court; and alſo to make and keep convenient and correct alphabets of the records of which they ſhall reſpectively be appointed officers and keepers.

Clerks of the Courts of Seſſions and Common Pleas, Regiſters of Probate, &c. to give bond to the County Treaſurer.

III. *And be it further enacted by the authority aforeſaid,* That the Clerks and Regiſters of the ſeveral Courts aforeſaid, that have not given bond, (if any ſuch there be) agreeably to an act paſſed in the year one thouſand ſeven hundred and ſixty-three, are hereby directed and enjoined to give bond in manner as is herein before directed, at the firſt ſeſſion of the Court of which he is Clerk or Regiſter, that ſhall be held after the paſſing this act; and any Clerk or Regiſter that ſhall neglect to give bond as aforeſaid, or after giving ſuch bond, ſhall incur a forfeiture thereof, ſhall be, and hereby is declared incapable of ſuſtaining or holding the ſaid office: and if either of the ſaid Clerks or Regiſters ſhall have neglected to compleat his records,

Clerks that have not given bond agreeably to a former law, directed to give bond in manner before directed.

Penalty for neglect.

records, for more than ſix months at any one time, after the firſt day of *June* next (ſickneſs or any extraordinary caſualty excepted) ſuch neglect ſhall be adjudged a forfeiture of the bond of ſuch Clerk or Regiſter.

And to render this act more effectual for the ſaid purpoſe:

IV. *Be it further enacted by the authority aforeſaid*, That the Juſtices and Judges of the ſeveral Courts, are hereby required and directed, to inſpect the conduct of their ſeveral Clerks and Regiſters with reſpect to the records aforeſaid, and upon a deficiency therein, ſuch Judge and Juſtices ſhall give information thereof, in writing, to the Treaſurer, who has the delinquent's bond in keeping; which Treaſurer ſhall forthwith put the ſame in ſuit; and the money recovered on ſuch ſuit, ſhall be applied for bringing up the deficient records, under the direction of the reſpective Judge or Judges of the Court, where ſuch deficiency ſhall happen, and if there be a ſupluſage from the bond of a Clerk of any of the lower Courts after making up the records, the ſame ſhall enure to the uſe of the county whereof the plaintiff is Treaſurer; and if in the Supreme Judicial Court, ſuch ſurpluſage ſhall enure to the uſe of the Commonwealth: and if the penalty of the bond incurred, ſhall be inſufficient to make up the deficient records, the eſtate of the deficient Clerk or Regiſter, ſhall be liable for the reſidue.

Juſtices and Judges required to inſpect the conduct of their ſeveral Clerks.

And whereas the Court of General Seſſions of the Peace, in their ſeveral counties, are by law authorized to remove and diſplace the Regiſter of Deeds, for miſconduct in the diſcharge of his duty, but no particular method is pointed out, in what manner the Court of General Seſſions of the Peace are to cauſe the ſame to be done:

V. *Be it therefore enacted by the authority aforeſaid*, That when any Regiſter of Deeds, upon the preſentment of the Grand Jury, or information of the Attorney-General, or the perſon acting for the government in the ſame office, ſhall by confeſſion, demurrer, verdict, or by neglecting to appear and anſwer, after reaſonable notice, be found guilty of miſconduct or miſbehaviour in diſcharging the duties of his ſaid office, or that by reaſon of infirmity of body or mind, he is incapable of diſcharging aright, in perſon, the duties thereof; the ſaid Court ſhall enter up judgment thereon (and from whence no appeal ſhall lie) that the ſame Regiſter be removed and diſplaced from the ſaid office; and thereupon iſſue a writ to the ſheriff of the ſame county, to take the books and papers to the ſaid office belonging, and deliver over to the Clerk of the Court of Common Pleas, to be by him carefully kept, until a Regiſter ſhall be duly choſen and qualified as the law directs.

The method Courts of General Seſſions ſhall proceed in diſplacing any Regiſter of deeds for miſconduct.

[This act paſſed *February* 16, 1787.]

An Act defining the general Powers and Duties, and regulating the Office of Sheriffs.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the Sheriff of each county in this Commonwealth, ſhall have power, and it ſhall be his duty, and the duty of each of his deputies, to ſerve and execute within his county, all writs and precepts to him or them directed and committed, iſſued from good and lawful authority; and the Sheriff of each county, ſhall have the cuſtody, rule, and charge of the goal or goals therein, and of all priſoners within ſuch goal or goals, and ſhall keep the ſame himſelf perſonally, or by his deputy, for whom he ſhall be anſwerable; and every Sheriff ſhall give ſufficient ſecurity, at the diſcretion of the Court of Common Pleas, in his county, unto the Treaſurer of the Commonwealth, for his faithful performance of the duties of his office, and to anſwer the malefeaſance and misfeaſance of all his deputies; and if any Sheriff ſhall neglect to give ſuch ſecurity, at the Court of Common Pleas, which ſhall be held in his county, next after his being commiſſioned, all ſervices done by him afterwards, and before he ſhall give ſuch ſecurity, ſhall be null and void.

Sheriffs to have the cuſtody of the goals.

To give ſecurity.

II *And be it further enacted by the authority aforeſaid,* That the Clerk of the Supreme Judicial Court, and each Clerk of the Peace, ſhall within fifty days after the end of their Courts reſpectively, return into the office of the Treaſurer of the State, a certificate of all fines, amerciaments, iſſues, and forfeitures ariſing or impoſed to the uſe of the Commonwealth, by their reſpective Courts, on penalty of *twenty pounds,* for each and every neglect, to be diſpoſed of as follows, *viz.* the one moiety to him or them, who ſhall ſue for the ſame, and the other moiety to the benefit of this Commonwealth. And the Attorney-General, as well as ſuch perſons as may from time to time be appointed by the Courts of General Seſſions of the Peace, within their reſpective counties, be, and hereby are eſpecially directed and enjoined to give information of, and proſecute for the recovery of all ſuch fines and forfeitures, as may be incurred by the Clerks aforeſaid, in conſequence of their breach of this act: And the ſaid Clerks ſhall reſpectively return a like certificate into the Secretary's office, that the General Court may thereby be enabled to ſettle with the Treaſurer; and each Clerk of the Peace, ſhall certify to the Treaſurer of his county, the fines ariſing to the county from time to time, from convictions in the Court of General Seſſions of the Peace. And the Supreme Judicial Court, and the Court of General Seſſions of the Peace, ſhall audit and ſettle the Sheriff's accounts for ſuch fines as ſhall have been by them impoſed, and for forfeitures ariſing in them reſpectively, and thereupon grant the Sheriff a full diſcharge.

A certificate of all fines, &c. to be returned to the Treaſurer.

Penalty for neglect.

Fines how to be recovered.

III. *And be it further enacted,* That no Sheriff or Deputy-Sheriff, ſhall be ſuffered to appear in any Court, or before any Juſtice of the Peace, as attorney to, or in behalf of, or aſſiſting, or adviſing to any party in a ſuit, nor ſhall any Sheriff, or his deputy, be allowed to draw,

No ſheriff to appear as an attorney.

draw, make, or fill up any plaint, declaration, writ or proceſs, or to draw or make any plea for any other perſon; but all ſuch acts done by either of them, ſhall be void. And if any Sheriff or his deputy, ſhall unreaſonably neglect or refuſe to pay to any perſon, any money received by him upon execution to the uſe of ſuch perſon, upon demand thereof being made, he ſhall forfeit and pay to ſuch perſon, five times the lawful intereſt of ſuch money, ſo long as he ſhall ſo unreaſonably detain the ſame, after ſuch demand is made.

Penalty for detaining money.

IV. *And be it further enacted by the authority aforeſaid,* That no Sheriff ſhall have his body arreſted upon mean proceſs, or upon an execution awarded upon a judgment, conſequent upon a civil action, and that when judgment ſhall be rendered againſt any perſon holding the office of Sheriff, either in his official or private capacity, for any ſum of money, the execution thereof, ſhall be iſſued againſt his goods, chattels, and lands, but not againſt his body; and if any execution iſſued againſt the goods, chattles, or lands of a perſon who holds the office of Sheriff, ſhall be returned not ſatisfied, the creditor may file before the Governour and Council, an atteſted copy of ſuch execution and return, and alſo ſerve ſuch Sheriff with a copy of ſuch copy filed, atteſted by the Secretary, together with notice under the hand of the Secretary, of the day of filing ſuch copy. And if ſuch Sheriff ſhall not, within forty days next after his being ſerved with ſuch copy and notice, pay the creditor the full of his debt, together with reaſonable coſts of the copies and notifications aforeſaid, the Governour, with the advice of Council, ſhall remove ſuch Sheriff from his office, and ſhall appoint ſome other perſon to the ſame.

Sheriffs not to have their bodies arreſted.

Executions iſſued againſt the goods of the Sheriff, returned not ſatisfied, the creditor to file an atteſted copy of the ſame.

And all Sheriffs, when removed from their office, as well as their deputies, ſhall have power to execute all ſuch precepts as may be in their hands at the time of their removal from office: And ſuch Sheriff ſhall be held anſwerable for the delivery over to their reſpective ſucceſſors, of all priſoners which may be in their cuſtody at the time of their removal, and for that intent, ſhall ſtill retain the keeping of the goal or goals in their reſpective counties, and the priſoners therein, until their ſucceſſors ſhall be appointed, and qualified as the law directs. And when a Sheriff ſhall be removed from his office, the Clerk of the Court from whence executions have been iſſued and returned not ſatisfied, ſhall be empowered as ſoon as another Sheriff ſhall be appointed and legally qualified, to make out alias executions in common form, as well againſt the body as the goods, chattles and lands of ſuch perſon ſo removed.

Sheriffs when removed from their office, to execute certain precepts.

Sheriffs anſwerable for the delivery of priſoners.

[This act paſſed *March* 12, 1784.]

An Act deſcribing the Duty and Power of Coroners.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That every Coroner within the county for which he is appointed, ſhall ſerve

Coroners to ſerve writs, &c.

ſerve all writs and precepts when the ſheriff or either of his deputies ſhall be a party to the ſame, and ſhall, if preſent in Court, return jurors *de talibus circumſtantibus* in all cauſes where the ſheriff of the county ſhall be intereſted or related to either party; they ſhall take inqueſts of violent deaths committed, and caſual deaths happening within their reſpective counties, and ſhall, before they enter upon the duties of their office, be ſworn to the faithful diſcharge thereof, and give ſecurity before they proceed to act, in the ſame manner as ſheriffs by law are obliged to do.

Coroner to make out warrants for jurors.

II. *And be it further enacted by the authority aforeſaid*, That each Coroner ſhall, as ſoon as he ſhall be certified of the dead body of any perſon, ſuppoſed to have come to his death by violence, or caſualty, found or lying within his county, make out his warrant, directed to the conſtable of the town where the dead body is found or lying, or to the conſtables of one or more of the three or four next adjacent towns, requiring them forthwith to ſummon a jury of good and lawful men of the ſame town or towns, ſufficient to make up eighteen in all, to appear before him at the time and place in ſuch warrant mentioned and expreſſed; which warrant ſhall be in form following:

S——. ſſ.

L.S. *To either of the conſtables of* B—, *in the ſaid county of* S—, GREETING.

Form of the warrant.

THESE are in the name of the Commonwealth of *Maſſachuſetts*, to require you immediately to ſummon and warn good and lawful men of the ſaid town of *B*——, to appear before me, one of the Coroners of the ſaid county of *S*——, at the dwelling-houſe of or at a place called within the ſaid town of *B*——, at the hour of then and there to enquire upon a view of the body of there lying dead, how and in what manner he came to his death.

Fail not herein at your peril. Given under my hand and ſeal, at *B*——, the day of in the year of our LORD,

W. G.

Conſtables to execute the Coroners warrant.

And every conſtable to whom ſuch warrant ſhall be directed and delivered, ſhall forthwith execute the ſame, and ſhall repair to the place where the dead body is, at the time mentioned, and make return of the warrant with his doings thereon, unto the Coroner that granted the ſame. And every conſtable failing unneceſſarily of executing ſuch warrant, or of returning the ſame as aforeſaid, ſhall forfeit the ſum of *three pounds*; and every perſon ſummoned as a juror as aforeſaid, that ſhall fail of appearance without having reaſonable excuſe therefor, ſhall forfeit *forty ſhillings*, which forfeitures ſhall be recovered by action of debt, before any Court that can take cognizance of the ſame, and ſhall be applied to the uſe of the county. And the Coroner ſhall ſwear twelve or more of the jurors that ſhall appear, and ſhall give the foreman (by him appointed) his oath upon view of the body, in form following:

Juror's oath.

YOU ſolemnly ſwear, that you will diligently enquire and true preſentment make, on behalf of this Commonwealth, how and in what manner *A. B.* who lies here dead, came to his death;

death ; and you ſhall deliver up to me, one of the Coroners of this county, a true inqueſt thereof, according to ſuch evidence as ſhall be laid before you, and according to your knowledge. *So help you God.*

And then ſhall ſwear the other jurors, in form following :

SUCH oath as your foreman hath taken, you, and each of you, ſhall well and truly obſerve and keep. *So help you God.*

And the jurors being ſworn, the Coroner ſhall give them a charge upon their oaths, to declare of the death of the perſon, whether he died of felony, or of miſchance, or accident ; and if of felony, who were principals, and who were acceſſaries, with what inſtrument he was ſtruck or wounded, and ſo of all prevailing circumſtances which may come by preſumption ; and if by miſchance or accident, whether by the act of man, and whether by hurt, fall, ſtroke, drowning, or otherwiſe : To enquire of the perſons who were preſent, the finders of the body, his relations and neighbours, whether he was killed in the ſame place where he was found, and if elſewhere by whom, and how he was brought from thence ; and of all circumſtances relating to the ſaid death : And if he died of his own felony, then to enquire of the manner, means or inſtrument, and of all circumſtances concerning it. And the jury being charged, ſhall ſtand together, and proclamation ſhall be made for any perſon that can give evidence, to draw near and that they ſhall be heard. And every Coroner is further empowered to ſend out his warrant for witneſſes, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in queſtion, and he ſhall adminiſter an oath to them in form following : Coroners charge to the jurors.

YOU ſolemnly ſwear, that the evidence which you ſhall give to this inqueſt, concerning the death of *A. B.* here lying dead, ſhall be the truth, the whole truth, and nothing but the truth. *So help you God.* Witneſſes oath.

The evidence of ſuch witneſſes, ſhall be in writing ſubſcribed by them : And if they relate to the trial of any perſon concerned in the death, then ſhall the Coroner bind ſuch witneſſes by recognizance in a reaſonable ſum, for their perſonal appearance at the next Supreme Judicial Court, to be holden within or for the ſame county, there to give evidence accordingly, and commit to the common gaol of the county, ſuch witneſs or witneſſes as ſhall refuſe to recognize as aforeſaid, and ſhall return to the ſame Court the inquiſition, written evidence, and recognizance by him taken. And the jury having viewed the body, heard the evidence, and made all the enquiry within their power, they ſhall draw up and deliver unto the Coroner, their verdict upon the death under conſideration, in writing, under their hands and ſeals, in form following : Witneſſes to recognize.

S——, ſſ. { AN inquiſition taken at *B*— within the ſaid county of *S*——, the day of in the year of our Lord before *W. G.* gentleman, one of the Coroners of the ſaid county of *S*——, upon the view of the body of *A. B.* there lying dead, by the oaths of yeomen, good and lawful men, who be- Form of the verdict.

Form of the verdict.

ing charged and ſworn to enquire for the Commonwealth, when, how, and by what means the ſaid *A. B.* came to his death, upon their oaths do ſay,

[*Then inſert how, when, and by what means, with what inſtrument he was killed, and if it appears that he hath been murdered by a perſon known, then the inquiſition ſhall be concluded in this form:*] to wit.

And ſo the jurors aforeſaid, upon their oaths aforeſaid, do ſay, that the aforeſaid *A. B.* in manner and form aforeſaid, then and there of his malice aforethought, did kill and murder, againſt the peace and dignity of this Commonwealth, and the laws of the ſame.

[*If it appears to be ſelf-murder, then ſhall the inquiſition be concluded thus*]

And ſo the jurors aforeſaid, thus upon their oaths, aforeſaid, do ſay, that the ſaid *A. B.* in manner and form aforeſaid, then and there voluntarily and felonioufly as a felon of himſelf, did kill and murder himſelf, againſt the peace.

[*And if it appears that the death was by misfortune*]

And ſo the jurors aforeſaid, upon their oaths ſay, that the ſaid *A. B.* in manner aforeſaid, came to his death by misfortune.

[*If innocently by the hands of any perſon*]

The jurors upon their oaths aforeſaid, do ſay, that the aforeſaid *D. R.* the aforeſaid *A. B.* by misfortune, and againſt and contrary to the will of him the ſaid *D. R.* in manner and form aforeſaid, did kill and ſlay. In witneſs whereof, the ſaid Coroner and jurors to this inquiſition have ſet their hands and ſeals, the day and year above-ſaid.

Upon an inquiſition found, the Coroner to inform one or more juſtices thereof.

And upon an inquiſition found before any Coroner of the death of any perſon, by the felony or misfortune of another, he ſhall ſpeedily inform one or more of the Juſtices of the ſame county thereof, to the intent that the perſon killing or being any way inſtrumental to the death, may be apprehended, examined, and ſecured in order for trial.

[This act paſſed *March* 12, 1784.]

An Act regulating the Appointment and Services of Grand Jurors.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That

Clerk of the Supreme Judicial Court to iſſue his warrant to the conſtables, thirty days before the ſitting of the Court.

thirty days at the leaſt before the ſitting of the Supreme Judicial Court in each county within this Commonwealth, the Clerk of the ſame Court ſhall iſſue his warrants, directed to the conſtables of the ſeveral towns within the county or counties for which the ſaid Court is to be holden, or to ſo many of the ſaid towns as the Court ſhall order, requiring the conſtables reſpectively, to aſſemble the freeholders and other inhabitants in the ſaid towns, qualified by law to vote in the choice of Repreſentatives, to elect and chooſe by ballot,

ballot, ſo many good and lawful men of their town, of like qualification, and of good moral character, as ſuch warrant ſhall direct, to ſerve on the Grand Jury at the ſame Court; and the conſtables ſhall ſummon the perſons ſo choſen, four days at the leaſt before the ſitting of the Court, to attend accordingly, at the day and place where the Court is to be holden, and to appear at ten of the clock in the forenoon upon the ſame day; and the conſtables ſhall make timely return of the warrants, with their doings therein, to the ſame Court. And when the Court is opened, the Grand Jury ſhall be empannelled and ſworn as follows:

Conſtables to ſummon the perſons choſen.

Grand Jury to be ſworn.

Foreman's oath.

"YOU ſolemnly ſwear, that as foreman of this inqueſt for the body of this county of —— you ſhall diligently enquire, and a true preſentment make of all ſuch matters and things as ſhall be given you in charge; the Commonwealth's counſel, your fellows and your own, you ſhall keep ſecret; you ſhall preſent no man for envy, hatred or malice; neither ſhall you leave any man unpreſented, for love, fear, favour, affection or hope of reward: but you ſhall preſent things truly as they come to your knowledge, according to the beſt of your underſtanding." "*So help you GOD.*"

Foreman's oath.

The other Jurors oath.

"THE ſame oath which your foreman hath taken on his part, you, and each of you, on your behalf, ſhall well and truly obſerve and keep." "*So help you GOD.*"

The other Jurors oath.

And if any conſtable ſhall neglect to aſſemble the inhabitants of his town, qualified as aforeſaid, when he ſhall have received ſuch warrant, or ſhall neglect to ſummon the perſons choſen in purſuance thereof, or ſhall not make due return of the ſame, with his doings therein, he ſhall pay ſuch fine as the Court in their diſcretion ſhall impoſe, not exceeding the ſum of *twenty pounds*. And if any town being duly notified as above provided, ſhall neglect to chooſe as many good and lawful men able to attend, as are directed in and by ſuch warrant, ſuch town ſhall be emercied in ſuch ſum as the Court ſhall order, not exceeding the ſum of *forty pounds*. And if any perſon choſen and notified to attend as aforeſaid, ſhall unneceſſarily fail of attending, he ſhall (if he is an inhabitant of *Boſton*, *Salem*, or *Newbury-Port*) pay a fine of *five pounds*, and otherwiſe a fine of *forty ſhillings*, to be divided equally amongſt the Grand Jurors who ſhall attend their duty at the ſame Court.

Conſtables neglecting their duty.

Penalty.

Towns neglecting to chooſe men, to be emercied by the Court.

Perſons choſen, failing to attend.

Penalty.

II. *And it is further enacted by the authority aforeſaid*, That the Clerk of the Court of General Seſſions of the Peace, ſhall, forty days at the leaſt before the firſt day of *March* annually, make out his warrant to the conſtables of the ſeveral towns in the county, or to ſo many of them as the Court ſhall order, requiring them ſeverally, to aſſemble the freeholders and inhabitants of their reſpective towns, qualified to vote for a Repreſentative, to chooſe by ballot, one or more good and lawful man or men in each town, as the Court ſhall direct, of like qualification, and of good moral character,

Clerk of the Court of General Seſſions of the Peace to iſſue his warrant to the conſtables, forty days before the firſt of March, annually.

to

to appear at the Court of General Seſſions of the Peace, to be holden within the ſaid county, next after the firſt day of *March*, and there to ſerve on the Grand Jury at every Court of General Seſſions of the Peace, throughout the whole year, until another Grand Jury ſhall be choſen, empannelled, and ſworn in their room, and the conſtables ſhall notify the perſons ſo choſen, four days before the ſitting of the Court. And it ſhall be the buſineſs of ſuch Grand Jury to preſent all crimes, offences and breaches of law cognizable by the ſaid Court, and they ſhall have the ſame oath adminiſtered to them, as is in and by this act provided for the Grand Jury ſerving at the Supreme Judicial Court.

Conſtables to notify the perſons choſen.

Grand Jury to have the ſame oath adminiſtered to them, as thoſe ſerving at the Supreme Judicial Court.

And if any conſtable ſhall neglect to aſſemble the inhabitants of his town, when he ſhall have received ſuch warrant, or ſhall neglect to ſummon ſuch perſon as ſhall be choſen in purſuance of ſuch warrant, or ſhall not make a timely return of the ſame, with his doings therein, he ſhall pay ſuch fine as the Court ſhall order, not exceeding the ſum of *ten pounds*. And if any town ſhall, after being duly notified, neglect to chooſe ſuch Grand Juror or Grand Jurors, ſuch town ſhall be emercied to the uſe of the county, in a ſum not exceeding *twenty pounds*, at the diſcretion of the Court. And if any perſon choſen and ſummoned to attend as aforeſaid, ſhall unneceſſarily fail of attending at the time and place appointed therefor, he ſhall (if he is an inhabitant of *Boſton*, *Salem*, or *Newbury-Port*) pay a fine of *five pounds*, otherwiſe a fine of *forty ſhillings*, to be divided amongſt the Grand Jurors who ſhall attend their duty.

Penalties for neglect in conſtables, towns, or perſons choſen to ſerve as Grand Jurors.

[This act paſſed *June* 21, 1784.]

An Act for regulating the Choice and Services of Petit Jurors.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the towns in this Commonwealth ſhall, until the firſt day of *January*, ſeventeen hundred and eight-five, proceed in the appointment of Jurors, as hath been heretofore practiſed in this government, and that forever thereafter the Clerks of the reſpective Courts in this Commonwealth, ſhall iſſue their *venire facias* for Jurors to ſerve at their reſpective Courts, from their offices, thirty days at the leaſt before the return day of the ſame, directed to the conſtables of each town in the county, or ſo many of them as the Court ſhall order, and the reſpective conſtables upon receipt thereof, ſhall notify the freeholders and inhabitants in their towns, qualified to vote in the election of Repreſentatives, to aſſemble and be preſent at the appointment of the Jurors called for, and to be appointed in manner by this act provided.

Towns to proceed in the appointment of Jurors, as heretofore practiſed.

Clerks of the reſpective Courts to iſſue venire facias.

II. *And it is further enacted,* That the ſelectmen of each town in this Commonwealth ſhall provide, and from time to time cauſe to be kept in their reſpective towns, two boxes, and ſhall once at leaſt, in every three years, lay before their town a liſt of ſuch perſons

ſons in their reſpective towns as are of good moral character and qualified as the conſtitution directs, to vote in the choice of Repreſentatives, and not exempted by this act, and ſuch as the ſelectmen ſhall judge well qualified to ſerve as Jurors, and the town ſhall ſelect out of the liſt one quarter part of the number laid before them, and ſuch as they ſhall judge beſt qualified to ſerve at the Supreme Judicial Court, and have their names written by the town-clerk on ſeparate pieces of paper and put into one of the boxes, to be liable to be drawn out as is herein hereafter directed, to ſerve on the Petit Jury, at the Supreme Judicial Court, and the town ſhall direct that ſuch of the remainder of ſuch liſt as the town ſhall think proper, ſhall have their names written on ſeparate pieces of paper and put into the other box, to be drawn, as is herein hereafter directed, to ſerve on the Petit Jury at the Courts of Common Pleas and General Seſſions of the Peace; and if any perſon whoſe name ſhall be put into either box, ſhall be convicted of any ſcandalous crime, or be guilty of any groſs immorality, his name ſhall be withdrawn from the box by the ſelectmen of his town. *Provided nevertheleſs*, If he can obtain a vote of the town to have his name reſtored to the box again, it ſhall be reſtored, and ſuch boxes ſhall be locked by the ſelectmen, and delivered to the town-clerks.

Jurors how be choſen.

Any perſon whoſe name ſhall be put into either box, being convicted of any ſcandalous crime, his name to be withdrawn.

III. *And be it further enacted by the authority aforeſaid*, That if the ſelectmen of any or either of the towns in this Commonwealth, for the time being, ſhall neglect or refuſe to prepare and lay before their reſpective towns a liſt of Jurors, as is required in and by this act, every ſelectman ſo neglecting his duty, ſhall forfeit and pay the ſum of *three pounds*, for the uſe of the county in which he or they dwelt at the time of ſuch neglect, to be recovered by action or information, brought by the treaſurer of ſuch county, before any Court proper to try the ſame, provided that the action be brought within twelve months after the offence ſhall be committed.

Selectmen neglecting their duty.

Penalty.

IV. *And be it further enacted by the authority aforeſaid*, That when any *venire facias* ſhall be iſſued as by this act is provided, and the inhabitants of any town ſhall be aſſembled for that purpoſe, the town-clerk, or in his abſence one of the ſelectmen, ſhall carry into the meeting the box wherein the names of thoſe perſons are put who are deſigned to ſerve at the Court from whence the *venire facias* iſſued, which ſhall be unlocked in the meeting by the major part of the ſelectmen, who are to be preſent (and the conſtable who ſhall warn the meeting ſhall particularly notify them, and the town-clerk for that purpoſe) and the town-clerk, or in his abſence one of the ſelectmen, ſhall draw out ſo many tickets as there are Jurymen required by the *venire*, who ſhall be the perſons that ſhall be returned to ſerve as Jurors; ſaving that if any whoſe names are ſo drawn, are ſick, or otherwiſe unable to attend at that time, in the judgment of the town, their names ſhall be returned into the box and others be drawn in their ſtead; and to the intent that the ſame perſons may not be obliged to ſerve too often, the clerk or ſelectmen who ſhall draw the ticket or name of any perſon returned to ſerve as aforeſaid, ſhall enter upon the back thereof the date of the

Duty of town-clerk or ſelectmen, when any venire facias ſhall be iſſued.

draft and return the ſame into the box again, and no perſon ſhall be obliged to ſerve as Juror oftener than once in three years.

The meeting for the appointment of Petit Jurors, to be ſix days before the ſitting of the Court.

V. *And be it further enacted*, That the meeting for the appointment of Petit Jurors, ſhall be ſix days at the leaſt before the day of the ſitting of the Court, to which the *venire* is returnable, and the conſtables ſhall notify the perſons thus appointed of the ſame, four days at leaſt before the ſitting of the Court wherein they are to ſerve, either by reading the *venire*, and minute of the appointment thereon, to the perſon appointed, or by leaving at their uſual abode, a written notification of their being drawn as aforeſaid, and of the time and place of the Court's ſitting, at which they are to attend. And when the ſelectmen ſhall at any time lay a liſt of the perſons liable and capable to ſerve before their town, they ſhall carefully transfer from the back of each old ticket, the minute thereon made, to the new one whereon the ſame name is written, that it may be certainly known, whether ſuch perſon ſhall have been drawn within three years.

Proviſo.

Provided always, That if any perſon ſhall be drawn and returned, and ſhall not appear, or appearing ſhall be excuſed by the Court, the minute on his ticket ſhall not excuſe him from being returned again when he ſhall be drawn, although it ſhall happen within three years.

When there ſhall be a deficiency of Grand or Petit Jurors, Courts ſhall cauſe writs of venire facias to be iſſued.

VI. *And it is further enacted by the authority aforeſaid*, That when there ſhall upon any occaſion be a deficiency either of Grand or Petit Jurors, by means whereof either the Supreme Judicial Court, or the Court of Common Pleas, or General Seſſions of the Peace, cannot proceed conveniently in the buſineſs of the county, the Courts ſhall cauſe writs of *venire facias* to be forthwith iſſued, and directed to the conſtables of any town or towns in the county, for the appointment and return of ſo many good and lawful men to ſerve on either Jury at the ſaid Court, as may be neceſſary, and the number required in ſuch *venire*, ſhall be appointed as the law directs, and notified to attend immediately. And when from challenges or otherwiſe, there ſhall not be a Jury to determine any civil or criminal cauſe, the Sheriff or his deputy, ſhall by order of the Court where ſuch defect of Jurors ſhall happen, return Jurymen *detalibus circumſtantibus*, ſufficient to compleat the pannel; and when the Sheriff or his deputy is intereſted or related, Jurors may be returned by the Coroner, or ſuch other diſintereſted perſons as the Court ſhall appoint. *Provided*, There be ſeven at the leaſt, of the Jurors returned by the *venire*.

When from challenges, &c. there ſhall not be a Jury to determine a cauſe, Sheriff or Coroner ſhall return Jurymen detalibus circumſtantibus.

Penalty for neglect of duty in conſtables, ſelectmen, town-clerks, or perſons returned to ſerve on the Petit Jury.

VII. *And it is further enacted*, That if any conſtable to whom ſuch *venire facias* ſhall be directed and come, ſhall neglect to do his duty, either in aſſembling the town, notifying the ſelectmen and town-clerk, or in notifying the Juror appointed, or in returning the *venire facias*, he ſhall pay ſuch fine as the Court in their diſcretion ſhall order, not exceeding the ſum of *ten pounds*; and if any ſelectmen or town-clerk, ſhall, after due notification by the conſtable, neglect to attend and perform his duty herein preſcribed, by means whereof the Jurors called for from his town, ſhall not be returned, he ſhall forfeit and pay a fine at the diſcretion of the Court, not exceeding

ceeding the ſum of *five pounds*; and if any perſon appointed and returned to ſerve on the Petit Jury, ſhall unneceſſarily fail of attending, he ſhall, if he is an inhabitant of *Boſton*, *Salem*, or *Newbury-Port*, pay a fine of *five pounds*, and if an inhabitant of any other town, he ſhall pay a fine of *forty ſhillings*; which fines ſhall be equally divided amongſt the Jurors who attend their duty.

Juſtices of the reſpective Courts, upon motion of either party, ſhall put any Jury upon oath.

VIII. *And it is further enacted by the authority aforeſaid*, That the Juſtices of the reſpective Courts aforeſaid, ſhall, upon motion from either party in ſuit, put any Juror upon oath, whether he is any way related to either party, or hath directly or indirectly formed or given any opinion, or is ſenſible of any prejudice in the cauſe; and if it ſhall then appear to the Court that any Juror does not ſtand indifferent in the cauſe, he ſhall be ſet aſide from the trial of that cauſe, and another called in his ſtead. And the Sheriff of each county, as ſoon as he ſhall receive the *venire* for Jurors from the Clerk of either Court, ſhall forward them without any delay, to the conſtables of the ſeveral towns whereunto they are directed.

In cauſes relating to the reality, either party may have a Jury to view the place in queſtion.

IX. *And it is further enacted*, That in all cauſes relating to the reality, either party may have a Jury to view the place in queſtion, if the Court ſhall be of opinion that ſuch view is neceſſary to the juſtice of the trial. *Provided*, The party moving therefor, ſhall advance ſuch reaſonable ſum to the Jury as the Court ſhall order to be taxed againſt the adverſe party, if he who advances the ſame ſhall prevail in the ſuit. *Provided*, That no ſettled Miniſter, Juſtice of the Peace qualified to act in his office, practiſing Attorney, Sheriff, Deputy-Sheriff, Coroner, Conſtable, Warden, Regiſter of a Court of Probate, Regiſter of Deeds, Clerk of a common Law Court, phyſician, conſtant ferryman or miller, ſhall be liable to be put into the box.

Proviſo.

Proviſo.

[This act paſſed *June* 16, 1784.]

An Act directing the Time and Manner of appointing County Treaſurers.

County-Treaſurer to be annually choſen.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That there ſhall be annually choſen in each county within this Commonwealth, in the month of *March* or *April*, by the written votes of ſuch perſons as are by the conſtitution qualified to vote for Repreſentatives in the ſeveral towns or diſtricts, a diſcreet ſuitable perſon, being a freeholder, and reſident in the ſame county, for a county Treaſurer; the votes to be counted and ſorted in the town or diſtrict meeting by the moderator thereof and town-clerk; the names of the perſons voted for, and the number each perſon had, ſhall be recorded by the clerk in the town or diſtrict book, and an atteſted copy of ſuch record ſhall be tranſmitted under ſeal to the next Court of General Seſſions of the Peace, to be held within and for the ſame county, on the firſt day of the Court's ſitting; there to be opened and compared with the like returns from the ſeveral towns and diſtricts in ſuch county: And the perſon having the majority

majority of the ſaid votes, and accepting of the ſaid office, after being ſworn to the faithful diſcharge of the truſt before the ſaid Court, or any two Juſtices thereof, *quorum unus*, and giving bond for the faithful diſcharge of the truſt, with ſufficient ſureties, in ſuch penal ſum as the Court ſhall direct, to the Clerk of the Peace for the ſame county, for the time being, and his ſucceſſor in that office, ſhall continue in the ſaid office for the term of one year, and until ſome other perſon ſhall be choſen and qualified as aforeſaid in his room.

When no one perſon ſhall have a majority of the votes returned, Juſtices of the Court of Seſſions may appoint a ſuitable perſon.

And in caſe, upon comparing the votes returned as aforeſaid, no one perſon ſhall have a majority of the whole number of votes returned, or the perſon choſen ſhall decline accepting the office, or after accepting ſhall die, or reſign, or remove out of the county, within the year; then, and in ſuch caſe, it ſhall be lawful for the Juſtices of the ſame Court, to appoint by ballot a ſuitable perſon, being a freeholder in the ſame county, to that office; and the perſon thus appointed by the Juſtices of the General Seſſions of the Peace, and accepting the office, and being ſworn to the faithful diſcharge of the truſt, and giving bond as before directed, ſhall be Treaſurer of ſaid county for the remainder of the year, and until ſome other perſon ſhall be choſen and qualified in manner as aforeſaid.

Monies received by the county-treaſurer, how to be improved.

II. *And be it further enacted by the authority aforeſaid*, That all monies received by the county Treaſurer, for the uſe of the county, ſhall be improved and employed by him for the defraying county charges, as the Court of General Seſſions of the Peace ſhall from time to time, by their order in writing, direct and appoint, except that the travel and attendance of the Grand Jury at the Supreme Judicial Court, and the travel of the Petit Jurors, with the fees for venires, and the legal fees to the clerk for examining and certifying the ſame, may be paid by order of the Supreme Judicial Court; and each county Treaſurer ſhall account with the Court of General Seſſions of the Peace, for the ſame county of which he is Treaſurer, for all his receipts and payments; which Court ſhall make him ſuch allowance for his executing the duties of his office, as to them ſhall ſeem reaſonable.

Empowered to inforce the payment of taxes; and ſhall lay an account annually before the General Court.

III. *And be it further enacted*, That each county Treaſurer reſpectively, be, and hereby is, authorized and empowered to draw in and inforce the payment of all county rates and taxes, aſſeſſed agreeably to the directions of law, by the ſame rules and methods preſcribed for the Treaſurer and Receiver-General of the Commonwealth to gather in the rates and taxes aſſeſſed for the uſe of the Commonwealth, and ſhall annually lay before the General Court an account of all monies, that ſhall have been raiſed in the county to which he belongs, by aſſeſſments, on the ſeveral towns and places therein, or by any other way or manner by him received as county Treaſurer, and how the ſame have been diſpoſed of; and no further aſſeſſment ſhall be made on the ſeveral towns and places in the county to which he belongs, until the ſaid account has been offered to the General Court and allowed by them.

This act to take place in December next.

IV. *And be it further enacted by the authority aforeſaid*, That this act ſhall be in force from and after the firſt day of *December* next, and not ſooner.

[This act paſſed *March* 23, 1786.]

An Act for the repealing of one Act of this Commonwealth, made and paſſed on the third Day of *May* laſt, entitled, "An Act providing a ſpeedy Method of recovering Debts, and for preventing unneceſſary Coſts attending the ſame;" and for making other Proviſion which may better anſwer the Ends deſigned by the ſaid Act.

Preamble.

WHEREAS among other defects in the ſaid act, there is no certain future day ſet therein after the day of the acknowledgment of the debt (propoſed to be taken) for the payment of the ſame, or for iſſuing the writ for the levying thereof:

An act paſſed 3d May laſt, repealed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſaid act, entitled as aboveſaid, be, and hereby is repealed; and that every part thereof be hereafter held and taken to be null and void. And that from and after the firſt day of *December*, one thouſand ſeven hundred and eighty-two, every Juſtice of the Peace for any county in this Commonwealth, ſhall ſeverally have power and authority within his county, to take recognizances for the payment of debts, of any perſon or perſons (by law capable of binding him or herſelf) who ſhall come before him for that purpoſe, according to ſuch form, or according to the effect and meaning of ſuch form as hereafter enſueth, *That is to ſay,*

Juſtices of the Peace empowered to take recognizances for the payment of debts.

Form of the recognizance.

Know all men, that I, C. D. of in the county of do owe unto E. F. the ſum of of the lawful money of *Maſſachuſetts*, to be paid to the ſaid E. F. on the day of 17 and if I ſhall fail of the payment of the debt aforeſaid, by the time aforeſaid, I will, and grant, that the ſaid debt ſhall be levied of my goods and chattels, lands and tenements, and in want thereof, of my body. Dated at this day of in the year of our Lord, 17

Witneſs my hand and ſeal,

ſſ. C. D.

Acknowledged the day and year laſt aboveſaid,

Before A. B. Juſtice of the Peace.

Recognizances to be made & written, and recorded at large;

II. *And be it further enacted by the authority aforeſaid,* That every ſuch recognizance ſhall be made and written on a piece of paper or parchment; and the Juſtice of the Peace taking the ſame, ſhall immediately cauſe it to be fairly recorded at large, in a book to be therefor by him provided and kept; which original recognizance, after the ſame ſhall be recorded as is above directed, at the requeſt of the conuſee or conuſees, or of the perſon or perſons to whom the remedy or executive proceſs on ſuch recognizance ſhall by law accrue (in caſe of the deceaſe of any or all of them) ſhall be delivered to him or them ſo requeſting it. And every conuſee or conuſees, his or their legal repreſentative or repreſentatives, for default of the payment of the debts contained in ſuch recognizances,

In caſe of default.

or any part of ſuch debts, by the time therein ſet and expreſſed for the payment thereof, ſhall have in every point, reſpect and degree, againſt the conuſor or conuſors, the ſurvivor or ſurvivors of them, his or their heirs, executors and adminiſtrators, and the heirs, executors or adminiſtrators of the laſt ſurvivor of ſuch conuſors, (where there ſhall be ſuch) the like proceſs or proceſſes, action and remedy, execution or executions, alias and pluries, as hath been hitherto had, uſed and accuſtomed, and may at this time be lawfully had, uſed, done, or made againſt them reſpectively, of and upon a judgment of any Court of Record in this Commonwealth on an action of debt in full force, unreverſed and not ſatisfied. And for the ſpeedy obtaining of ſuch debts, the Juſtice of the Peace who took ſuch recognizance, at any time within three years from and after the day ſet and expreſſed therein for the payment of the debt or any part thereof expreſſed in ſuch recognizance, at the requeſt of the conuſee or conuſees, named therein, or in caſe of their death, at the requeſt of the perſon or perſons to whom the remedy or choſe in action thereon, ſhall be caſt by law; and upon his or their producing and delivering to him ſuch original recognizance uncancelled, and without any receipt of payment or ſatisfaction of the ſum alledged to be then payable and due, underwritten or endorſed, and lodging the ſame with the ſaid Juſtice, he ſhall award and make out on ſuch recognizance a writ or proceſs of execution for the levying of the whole ſum, which by ſuch recognizance and the receipts (if any there be) entered thereon, appear to be then due and payable, of the ſame nature and effect, againſt the body or bodies, and eſtate, real and perſonal, of the conuſor or conuſors, as by the laws of this Commonwealth a judgment creditor is entitled to have for the levying and ſatisfying any ſum or ſums of money, recovered and due to him, by the judgment of any Court of Record in this Commonwealth, on an action of debt in full force. And ſuch proceſs for the execution of ſuch recognizance, may and ſhall be directed to, executed and returned by, all and any ſuch officer and officers as the writ or proceſs for the execution of the judgment of any Court of Record, by the laws of this Commonwealth, may and ought to be directed to, and returned by. And all and every ſuch officer and officers for any town or county in this Commonwealth, ſhall have the like powers and authority, and ſhall be under the like obligations in all reſpects and regards whatſoever, to execute and return ſuch writ or proceſs made upon ſuch recognizance by ſuch Juſtice of the Peace empowered by this act to award the ſame, as he or they by law have, and are under, to execute and return a writ of execution on any judgment of a Court of Record, in an action of debt: and ſhall be ſubject and liable to all the like action and actions for any fraud or falſhood, neglect, misfeaſance and malefeaſance, in or concerning the executing or returning of any ſuch proceſs for the executing of ſuch recognizance aforeſaid, as he or they by law are liable and ſubject to, for any defaults, neglects, frauds, falſhoods, delinquencies, or errors whatſoever, touching, concerning, or in any wiſe relating to the execution or return of any writ or proceſs on any judgment of a Court of Record in an action of debt. And every writ

For the ſpeedy obtaining of ſuch debts

How the proceſs for the execution of recognizances ſhall be directed.

writ or proceſs for the executing ſuch recognizance may run into any county or place (and is hereby made awardable into any county or place in this Commonwealth) and may and ſhall be there executed by the officer or officers of ſuch county, town or place by law having the execution and return of writs, to whom it ſhall be directed. And the writ or proceſs for the executing of ſuch recognizance as is aforeſaid, ſhall be in the form, or to the effect and meaning of the form which here followeth, *to wit*.

Writs or proceſſes to run into any county or place in this Commonwealth.

The Commonwealth of *Maſſachuſetts*.

L.S. *To the ſheriff of the county of his under-ſheriff or deputy, or either of the conſtables of the town of in the ſaid county of*

Greeting.

BECAUSE C. D. of in the county of on the day of in the year of our Lord 17 before A. B. Eſquire, one of the Juſtices of the Peace for the ſaid county of acknowledged that he was indebted to E. F. of in the county of in the ſum of which he ought to have paid on the day of and remains unpaid, as it is ſaid. Form.

WE command you therefore, that of the goods, chattels, or real eſtate of the ſaid C. D. within your precinct, you cauſe to be paid and ſatisfied unto the ſaid E. F. at the value thereof in money, the ſum laſt aboveſaid, with more for this writ, and thereof alſo to ſatisfy yourſelf your own lawful fees: and for want of goods, chattels, or real eſtate of the ſaid C. D. to be found within your precinct, to the acceptance of the ſaid E. F. to ſatisfy the ſums aforeſaid, and your ſaid fees; we command you to take the body of the ſaid C. D. and him commit unto our goal in our county of aforeſaid, there to be detained in the ſaid goal, until he pay the full ſums aboveſaid, with your ſaid fees, or that the ſaid C. D. be diſcharged by the ſaid E. F. the creditor, or otherwiſe by order of law. Hereof fail not, and make return of this writ with your doings therein, unto the above-named A. B. within ſixty days next coming. Witneſs the ſaid A. B. at the day of in the year of our Lord, 17

A. B.

III. *And it is further enacted*, That in caſe at the time of awarding ſuch writ of execution there ſhall by reaſon of death happen to be any change of the perſon or perſons who by law ſhall have the right to ſue out the ſame, or of the perſons chargeable with the payment of the contents of the recognizance, from the time when it was taken; the form of the ſaid writ ſhall be ſo varied from the foregoing form, as to make it take effect, according to the operation of the law upon the caſe at the time of the writ's iſſuing. In caſe —

Provided always, That in what manner ſoever the choſe in action may be changed by the death of one or more of the conuſees, the property and intereſt in the debt ſhall always in that caſe veſt in ſuch perſon or perſons as a debt which is due to joint-merchants does by the law-merchant; and that the right of ſurvivorſhip ſhall not take place with regard to the property in the debt. Proviſo.

IV.

No writ to make the bodies of the heirs at law liable to be taken.

IV. *And be it further enacted by the authority aforeſaid,* That no writ of this ſort ſhall be awarded in ſuch form, as to make the body or bodies of the heir or heirs at law, of the conuſor or conuſors, or the proper goods or eſtate of the executors or adminiſtrators, liable to be taken in ſatisfaction of the ſaid writ: but in caſe of the death of any conuſor or conuſors of this ſort, ſuch writ ſhall run againſt ſuch perſon, perſons and eſtate, as a writ of execution on a judgment of a Court of Record in an action of debt, would by law run, in caſe the judgment debtor or debtors, or any of them, were dead. And that every perſon and perſons that ſhall be grieved and injured by the wrongful ſueing out and executing of any writ or proceſs of execution of this ſort, ſhall have all the like remedy and remedies in the law, as in caſe a writ of execution on any judgment of a Court of Record in debt, had been unjuſtly and wrongfully ſued out and executed upon him or them.

But in caſe.

All perſons grieved to have remedy in the law.

In caſe three years from the time limited in ſuch recognizſhall have elapſed.

V. *And be it further enacted,* That in caſe at any time it ſhould happen, that full three years ſhall have elapſed from and after the time ſet and limited in and by ſuch recognizance for the payment of the contents thereof, without any payment made and underwritten or indorſed, and without any writ of execution having been ſued out thereon; or in caſe any payment or payments of part ſhall have been made and underwritten, or indorſed at any time or times after the time ſet and expreſſed for the payment of the contents, and three years ſhall have elapſed from and after the laſt of ſuch payments, and no writ of execution ſhall have been ſued out within three years from the laſt payment; no writ of execution ſhall be awardable in either of ſuch caſes, until a writ of *ſcire facias* ſhall have been ſued out from a Court in which by law an original action for a like ſum might have been brought and ſerved, and return thereof made as by law is directed; but after that ſhall have been done, and upon the defendant's non-appearance or not ſhewing ſufficient cauſe, and the plaintiff's producing and filing the original recognizance in the Court from which the *ſcire facias* iſſued, the Court ſhall proceed to award execution for what ſhall appear to be due on ſuch recognizance, with the lawful coſts.

In caſe of the death of Juſtices of the Peace who have taken recognizances.

VI. *And be it further enacted by the authority aforeſaid,* That in caſe of the death of the Juſtice of the Peace, who ſhall have taken any ſuch recognizance as the aforeſaid, or of his removal out of the Commonwealth or otherwiſe, where no writ of execution thereon has been ſued out, and returned ſatisfied; in every ſuch caſe, any creditor or creditors, who ſhall have any ſuch recognizance taken before ſuch deceaſed or removed Juſtice, and ſhall file the ſame in the Court of Common Pleas for the county where either the creditor or debtor dwells, ſhall be entitled to ſue out a writ of *ſcire facias* thereon: and the debtor being ſerved with ſuch writ in the manner above preſcribed, and not appearing or ſhewing ſufficient cauſe why execution ſhould not be had, the Court ſhall proceed to award execution for what ſhall appear to be due, with lawful coſts.

VII. *And be it further enacted,* That any perſon or perſons in whoſe favour any acknowledgment has been taken, on or before the firſt day of *December* next, agreeable to the act mentioned as above,

to

to be repealed, ſhall be entitled to the benefit of the ſame proceeding thereon, as he might have had if the ſame act had continued in force and unrepealed; any thing in this act to the contrary notwithſtanding. Perſons in whoſe favour acknowledgments have been taken.

VIII. *And be it further enacted*, That the fees to the Juſtice of the Peace who ſhall take recognizances purſuant to this act, ſhall be as followeth, *to wit*. Fees to the Juſtices.

For taking and atteſting any ſuch recognizance, be the number of the conuſors or conuſees more or leſs, ſhall be *one ſhilling* and *ſix pence*, and no more.

For recording ſuch recognizance, *one ſhilling*, and no more.

For the writ of execution on ſuch recognizance, *one ſhilling* and *ſix pence*, and no more.

[This act paſſed *October* 19, 1782.]

An Act for rendering the Deciſion of Civil Cauſes, as ſpeedy, and as little expenſive as poſſible.

WHEREAS it is the duty of the Legiſlature, to provide means whereby the deciſion of civil cauſes ſhould be as ſpeedy, and attended with as little expence to the citizens of this Commonwealth, as the nature of things will admit: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That when any perſons who may have a diſpute, of what nature ſoever, ſhall agree to have the diſpute determined by referees, mutually choſen by the parties for the purpoſe, it ſhall, and may be lawful for the perſon or perſons making the demand in the action, to make out a particular ſtatement thereof, under his or their hands in writing, and to lodge the ſame with ſome one Juſtice of the Peace of the county in which the perſon or perſons making the demand may dwell; and the ſaid Juſtice of the Peace, upon application of the parties for the purpoſe, ſhall make out an agreement to be annexed to the aforeſaid demand, and to be by them or their lawful agents or attornies, ſubſcribed, and acknowledged, in ſubſtance as follows. When perſons agree to have a diſpute ſettled by referees, the agreement ſhall be ſubſcribed and acknowledged.

Town of A—, *in the county of* S—, 178

Know all men, that *A. B.* of in the county of (addition) and *C. D.* of in the county of (addition) have agreed to ſubmit the demand made by the ſaid *A. B.* againſt the ſaid *C. D.* which is hereunto annexed (and all other demands, as the caſe may be) to the determination of *E. F. G. H.* and *I. K.* the report of whom, or the major part of whom being made as ſoon as may be to any Court of Common Pleas, to be holden in and for the ſaid county of *S*———, judgment thereon to be final: And if either of the parties ſhall neglect to appear before the referees, after proper notice being given them Form of the agreement.

them of the time and place appointed by the referees for hearing the parties in this action, the referees ſhall have power to proceed *exparte*.

A. B.
C. D.

Form of the acknowledgment.

S. ſſ. 178 Then the abovenamed *A. B.* and *C. D.* perſonally appeared and acknowledged the above inſtrument by them ſubſcribed to be their free act. Before me,

L. M. Juſtice of the Peace.

Fees for making out the agreement and acknowledgment.

II. *And be it further enacted*, That there ſhall be paid by the perſon or perſons making the demand in the action, *two ſhillings* unto the Juſtice of the Peace, that may make out the agreement, and take the acknowledgment thereof, as aforeſaid, which ſum ſhall be added to the coſts that may ariſe in the action for the determination of which, the agreement and acknowledgment were made as aforeſaid.

Determination of referees to be made to the Court of Common Pleas.

III. *And be it further enacted by the authority aforeſaid*, That the determination of the referees who may be appointed, agreeably to this act, ſhall be made to the next Court of Common Pleas, to be holden in, and for the county in which the Juſtice of the Peace may have lived at the time he iſſued the agreement as aforeſaid; and the Court of Common Pleas to whom the report of the referees may be made as aforeſaid, ſhall have cognizance thereof, in the ſame way and manner, and the ſame doings ſhall be had thereon, as though the ſame had been made by referees appointed by a rule of the ſame Court. And the Juſtices of ſaid Court to which a report ſhall be made by referees appointed agreeably to this act, ſhall be entitled to *three ſhillings* for each report ſo made; and the Clerk of ſaid Court for recording the ſame, ſhall receive *eight pence*.

Determination may be made known to the parties prior to its being made to the Court.

IV. *And be it further enacted by the authority aforeſaid*, That where the parties ſhall agree that the determination of the referees may be made known, prior to its being made to the Court of Common Pleas as aforeſaid, it ſhall and may be lawful for the referees to make known the determination to the parties, without its affecting in any degree the validity thereof, and if the determination ſhall be ſo made known to the parties, it ſhall and may be lawful for the party who may be found indebted agreeably to the determination aforeſaid, to diſcharge him or themſelves therefrom, and thereby prevent any further proceſs thereon, by paying the ſame unto the perſon or perſons to whom it may be ſo awarded, and having his or their receipt therefor on the back of the determination aforeſaid; in which caſe the determination and papers accompanying the ſame, ſhall be returned to the Court of Common Pleas, to be recorded by the Clerk of ſaid Court, in the ſame manner as though the money had not been paid as abovementioned.

Power of referees appointed in purſuance of this act.

V. *And be it further enacted*, That the referees that may be appointed in purſuance of this act, ſhall be veſted with all the authority and power that referees have been, or may hereafter be veſted with, who have been, or ſhall be appointed by a rule of Court. And

witneſſes

witneſſes ſhall be ſummoned to appear before them and ſworn, in the ſame manner as is or may be preſcribed by law for ſummoning witneſſes before referees appointed by a rule of Court as aforeſaid.

[This act paſſed *July* 7, 1786.]

An Act granting the Privilege of Review in Civil Actions.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That either party aggrieved at the judgment of the Supreme Judicial Court, where only one verdict hath been given againſt him in ſuch action, may at any time within two years, review the ſame cauſe and have one trial more; and there ſhall be no further pleadings, but the action ſhall be tried upon the review, by the iſſue appearing upon the record, to have been originally joined by the parties, but execution upon ſuch judgment, given in the Supreme Judicial Court, ſhall not be ſtayed by ſuch review, unleſs a bond ſhall be given, as is in this act provided. And the party bringing ſuch action of review, ſhall produce in Court atteſted copies of the writ, judgment, and all papers uſed and filed in the former trial, and each party ſhall have the liberty to offer any further evidence.

Either party ſhall have the privilege of review, at any time within two years.

And it is alſo *Provided,* That any infant, feme covert, or perſon *non compos mentis,* impriſoned, in captivity, or out of the United States of *America,* ſhall have liberty to review their actions, at any time within two years, excluſive of the time ſuch impediment exiſts.

Proviſo.

II. *And be it further enacted,* That when either party ſhall bring an action of review, and enter the ſame, the whole cauſe ſhall be tried in the ſame manner, as if no judgment had been given thereon; and the former judgment may be reverſed, in whole or in part, or greater damages, or leſs, or no damages, may be given, as the merits of the cauſe, upon law and the evidence, ſhall appear to require, in the ſame manner as if both parties had brought their ſeveral writs of review.

In actions of review, cauſes how tried.

III. *And it is further enacted,* That when there are more than one original defendant, againſt whom joint damages are recovered, and one or more, but not all of them, ſhall review the cauſe, he or they ſhall purchaſe the writ therefor, in the name of all the original defendants; and if any of the original defendants ſhall not appear, their non-appearance ſhall be entered upon the Court's record; and he or they who ſhall appear, in ſupport of the review, may proſecute the ſame to final judgment; and if he or they who ſhall proſecute the ſame, ſhall obtain a reverſal of the former judgment, in whole, he or they ſhall be entitled to coſt, and a reſtoration of the damages by him or them reſpectively paid in ſatisfaction of the former judgment: And if he or they who ſhall proſecute as aforeſaid, ſhall obtain a reverſal of the former judgment, in part only, he or they ſhall be entitled to coſts, and a reſtoration of ſo much of the damages

When damages are recovered againſt more than one original defendant, and one or more, but not all of them, ſhall review the cauſe, the writ ſhall be purchaſed in the name of the whole.

damages by him or them reſpectively paid, in ſatisfaction of the former judgment, as the former judgment may have exceeded the judgment upon the review as aforeſaid.

When damages are given againſt ſeveral defendants, either of them may review, &c.

IV. *And be it further enacted by the authority aforeſaid,* That when ſeveral damages are given, againſt ſeveral defendants, either of them may review, in the ſame manner, as if there was no other original defendant in the cauſe; and if he ſhall obtain a reverſal of the former judgment, in whole, as to him, he ſhall be entitled to a reſtoration of all damages and coſts by him paid: And if he ſhall obtain a reverſal of the former judgment, in part only, he ſhall be entitled to coſts, and a reſtoration of ſo much of the damages by him paid in ſatisfaction of the former judgment, as the former judgment may have exceeded the judgment upon the review as aforeſaid.

When any original defendant, entitled to a review, ſhall ſuppoſe there is danger of loſing the ſum given in damages, &c. directions in this caſe.

V. *And be it further enacted by the authority aforeſaid,* That when any original defendant or defendants entitled to, and intending to review, ſhall ſuppoſe that they will be in danger of loſing the ſum given in damages, or the goods or chattels recovered, if they are obliged to pay or deliver the ſame to the original plaintiff or plaintiffs, before a review, in all ſuch caſes ſuch defendant or defendants, his or their agent or attorney, entering into bond at the time of making up the judgment, with ſufficient ſurety or ſureties, to be approved of by the Court, with condition to proſecute a writ of review of the ſame action, with effect, at the next Supreme Judicial Court, to be holden for the ſame county, and to anſwer and pay to the original plaintiff or plaintiffs, for the damages, goods or chattels recovered, after the rate of twelve *per cent.* per annum, being double intereſt from the time of making up ſuch judgment, with additional damages and double coſts, in caſe the former judgment ſhall be affirmed in whole; and ſimple intereſt if the ſame ſhall be affirmed in part, or if the judgment ſhall be upon detinue or replevin for any goods or chattels, then to pay all ſuch damages, as the Jury ſhall aſſeſs for the detention, with double coſts; if the former damages are affirmed, then execution ſhall be ſtayed upon the judgment whereon the review is had.

Manner of ſerving writs, when any party ſhall not be an inhabitant of this Commonwealth.

And when any party againſt whom any review is commenced, ſhall not be an inhabitant of this Commonwealth, the writ may be ſerved upon ſuch perſon as appeared for him in the former trial, or upon the agent of the ſaid party, his attorney, or truſtee, which ſhall be deemed a ſufficient ſervice; and in ſuch caſe the Court may at their diſcretion, continue the cauſe for one or more terms, in order for the party to have perſonal notice, if they ſhall think that juſtice requires it.

When one or more, and not all the defendants ſhall chuſe to review the cauſe he or they ſhall give bond, &c.

VI. *And be it further enacted,* That when one or more, and not all the original defendants, againſt whom joint damages are given ſhall chuſe to review the cauſe, he or they ſhall be obliged to give bond, for the reſponding the whole ſum given in damages, together with double intereſt and additional damages, as before provided; and no execution ſhall be iſſued againſt the other original defendants.

And

In real actions where the defendants live out of the Commonwealth, &c.

VII. *And it is further enacted,* That in all real actions, where the defendant or defendants in review, live out of the Commonwealth, ſo that the writ of review cannot be ſerved upon him or them, the ſervice of ſuch writ upon the tertenant or perſon in poſſeſſion, ſhall be deemed a good and ſufficient ſervice, and the defendant or defendants ſhall be held to anſwer thereupon accordingly.

[This act paſſed *February* 27, 1787.]

An Act empowering the Juſtices of the Supreme Judicial Court, to grant Writs of Review in certain Caſes.

Preamble.

WHEREAS the Juſtices of the Supreme Judicial Court, are by law empowered in certain caſes, to ſet aſide verdicts and grant new trials; but are not empowered by law, to ſet aſide judgments, when rendered on ſuch verdicts;—and foraſmuch as the ſaid Juſtices have no power to ſet aſide ſuch judgments, many inconveniencies have happened and may hereafter happen, unleſs ſome remedy be provided:

Juſtices of the Supreme Judicial Court empowered to grant reviews in certain caſes.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That wherever there hath been or hereafter may be, any legal cauſe for the ſaid Juſtices before judgment, to ſet aſide any verdict, but nevertheleſs judgment hath been or hereafter may be rendered on ſuch verdict, the party aggrieved by ſuch judgment, (and not otherwiſe entitled to a review of the cauſe) may petition the Juſtices of the aforeſaid Court, at any of their terms, for a review of ſuch cauſe; and the ſaid Juſtices, on due notice to the adverſe party, and full conſideration of ſuch petition, are hereby empowered (if they ſee fit) to grant a review of the ſaid cauſe, on ſuch terms and conditions as to them may ſeem juſt and reaſonable between the ſaid parties.

And whereas by reaſon of accident, miſtake, or ſome unforeſeen cauſe, judgments have been and hereafter may be rendered in the ſaid Court, on diſcontinuance, non-ſuit, *nil dicit*, *non ſum informatus*, report of referees, or default, and ſuits have been and hereafter may be, diſcontinued without judgment, to the hindrance or ſubverſion of juſtice: Wherefore,

Whenever by reaſon of accident or miſtake judgment hath been or hereafter may be rendered, &c. Juſtices empowered to grant a review of the action.

II. *Be it further enacted by the authority aforeſaid,* That whenever by reaſon of any accident, miſtake, or any unforeſeen cauſe, judgment hath been, or hereafter may be rendered, on diſcontinuance, non-ſuit, *nil dicit*, *non ſum informatus*, report of referees, or default, or ſuits have been, or hereafter may be diſcontinued without judgment, to the hindrance or ſubverſion of juſtice; the ſaid Juſtices on petition as aforeſaid, are further empowered to grant a review of the action in manner as aforeſaid.

And whereas ſimilar caſes do happen, in the Courts of Common Pleas, and before Juſtices of the Peace:

When ſimilar caſes happen in the Courts of Common Pleas, or before Juſtices of the Peace, writs of review may be granted.

III. *Be it therefore enacted by the authority aforeſaid*, That wherever by reaſon of any of the cauſes mentioned in the laſt enacting clauſe, any judgment in the ſaid Court of Common Pleas, or before any Juſtice of the Peace, hath been, or hereafter may be rendered in manner as in the ſame clauſe is mentioned; or any appeal hath been or hereafter may be prevented, or loſt, to the hindrance or ſubverſion of juſtice as aforeſaid; and the party aggrieved ſhall produce in and file with the Clerk of the Supreme Judicial Court, a copy of record of the cauſe duly atteſted, and ſhall petition the Juſtices of the ſame Court, for a review of the cauſe in manner as aforeſaid, the ſaid Juſtices may grant a review of the ſaid cauſe, in manner aforeſaid, to be heard and determined in the ſaid Supreme Judicial Court.

Proviſo.

Provided always, That no petition for review, ſhall be ſuſtained after one year and ſix months from the time of rendering judgment in the action, and only one review, ſhall ever be granted in any action, by virtue of this act.

Writs of review, how ſued out, &c.

IV. *And be it further enacted by the authority aforeſaid*, That whenever a review is granted by virtue of this act, a writ of review ſhall be ſued out and proſecuted to final judgment and execution, in the ſame manner as is provided in other actions of review.

Juſtices empowered to ſtay executions, &c.

V. *Be it further enacted by the authority aforeſaid*, That the Juſtices aforeſaid, to whom any petition ſhall be prefered in manner aforeſaid, are further empowered to ſtay execution in the cauſe, on ſuch conditions as are beforementioned; and whenever the ſame Juſtices ſhall adjudge, that the petitioner ſhall take nothing by his petition, they are alſo empowered to award the reſpondent his reaſonable coſts, and execution may be ſued out accordingly.

[This act paſſed *June* 18, 1788.]

An Act directing the iſſuing, extending and ſerving of Executions.

Party obtaining judgment entitled to his execution in twenty-four hours.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the party obtaining judgment in a civil action, in any Court of judicature within this Commonwealth, ſhall be entitled to have his execution thereon at any time after the expiration of twenty-four hours after judgment rendered, and within one year next after the entering up of ſuch judgment, *Provided*, that there is no appeal granted or bond given for review. And execution iſſuing from the Common Pleas, ſhall be made returnable to the next Court of Common Pleas to be held within the county, excepting where there are but two or three Courts in a year, in which caſe they ſhall be made returnable within three months, unleſs the Court of Common Pleas ſhall ſit within that time, and in that caſe it ſhall be made returnable to the next Court; and thoſe iſſuing from the Supreme Judicial Court ſhall, in ſuch counties as have two Supreme

Proviſo.

Judicial

Judicial Courts eſtabliſhed to be holden annually in them, be made returnable to the next Court; and in thoſe counties where the ſaid Court is held but once a year, the executions therefrom ſhall be made returnable at the end of ſix months, unleſs the Supreme Judicial Court ſhall ſit in the ſaid county within that time, and in that caſe it ſhall be returnable to the ſame; and thoſe iſſuing from a Juſtice of the Peace, ſhall be made returnable within ſixty days from the day of iſſuing them; and when ſuch executions ſhall be returned without any ſatisfaction made, or ſatisfied only in part, the Clerk of the Court from whence, or Juſtice from whom ſuch execution iſſued, ſhall, upon application of the creditor, make out an alias or pluries execution for the whole or the remainder, as the caſe may be, till the judgment ſhall be fully ſatisfied: But if the party ſhall neglect for the ſpace of one year next after obtaining judgment to take out his execution, or ſhall not within one year next after his execution ſhall be returned not ſatisfied, take out his alias or pluries, he ſhall ſue out his writ of *ſcire facias*, and ſhall cauſe the adverſe party to be ſerved with the ſame perſonally, or by leaving an atteſted copy thereof at his laſt and uſual place of abode, fourteen days before the ſitting of the Court, notifying him to ſhew cauſe, if any he hath, why execution ought not to be done; and upon his non-appearance or not ſhewing ſufficient cauſe, the Court ſhall award execution for what remaineth, with additional coſts.

Executions when returnable.

If returned not ſatisfied, alias to be granted.

If not taken out within a year, writ of ſcire facias to be ſued out.

II. *And be it further enacted by the authority aforeſaid*, That when any perſon ſhall obtain judgment in any Court within this Commonwealth, for any ſum of money or other ſpecie, and the perſon or perſons againſt whom the judgment is, does not ſatisfy ſuch judgment by money or other ſpecie, and the creditor can find no perſonal eſtate to his acceptance wherewith to ſatisfy his execution, and ſhall think proper to levy his execution upon the debtor's real eſtate; then the officer to whom the execution is directed and delivered, ſhall cauſe three diſintereſted and diſcreet men, being freeholders in the county, one to be choſen by the creditor or creditors, one by the debtor or debtors, whoſe land is to be taken, if they ſee cauſe, and a third by the officer; and in caſe the debtor or debtors ſhall neglect or refuſe to chuſe as aforeſaid, the officer ſhall appoint one for ſuch debtor or debtors to be ſworn before one of the Juſtices of the Peace of the ſame county, faithfully and impartially to appraiſe ſuch real eſtate as ſhall be ſhewn to them who ſhall appraiſe the ſame, to ſatisfy the ſame execution with all fees, and ſhall ſet out ſuch eſtate by meets and bounds, and the officer ſhall deliver poſſeſſion and ſeizen thereof to the creditor or creditors, his or their attorney. And when the real eſtate of the debtor or debtors ſhall be held in joint tenancy, in coparcenary or tenancy in common with the real eſtate of other perſons, then the ſaid officer may extend execution on ſuch debtor or debtors real eſtate held as aforeſaid, or part thereof, deſcribing the ſame with as much preciſion as the nature and ſituation thereof will admit of, and give the creditor or creditors, his or their attorney, ſeizen or poſſeſſion of ſuch debtor or debtors real eſtate held as aforeſaid, or part thereof, to hold in common with the ſaid other perſons; which execution being

Real eſtate of debtors liable to be taken by execution.

being returned with the doings thereon into the Clerk's office, and before ſuch return into the Clerk's office or afterwards, and within three months, the ſame ſhall be recorded in the Regiſtry of Deeds in the county where the land lays, ſhall make as good title to ſuch creditor or creditors, his or their heirs and aſſigns, as the debtor had therein.

Equity of redemption allowed within one year.

III. *And it is further enacted*, That when any tenement or lands in part or in whole ſhall be taken in execution for debt, it ſhall and may be lawful to and for the perſon, his heirs or aſſigns, executors or adminiſtrators, whoſe eſtate is ſo taken in execution, within the ſpace of one year next following the extending execution thereon, and not afterwards, to tender the creditor or the tenant in poſſeſſion under his title by the execution, the full of the debt for which the ſame tenement was taken, with intereſt from the time of the extending the execution, and the reaſonable and neceſſary charges and diſburſements laid out and expended thereon in repairing or bettering the ſame, over and above what the rents, profits, and improvements thereof ſhall fall ſhort of reimburſing; ſuch charges and intereſt to be accounted for by the party for whom the ſame was taken, or the tenant in poſſeſſion, under his title, which diſburſements, expences, rents, profits and improvements, may be ſettled by any three Juſtices of the Peace in the county where the land lays, at the charge and expence of the debtor, one to be choſen by the debtor, and the other by the creditor, if he ſhall ſee cauſe to chuſe one, otherwiſe they may be both choſen by the debtor, and the third by the two Juſtices ſo choſen by the parties, or one of them as above directed, and which third ſhall be choſen before the other two proceed to a conſideration of the buſineſs; and if the creditor or the tenant in poſſeſſion as aforeſaid, upon having a tender made of the ſum certified under the hands of the ſaid Juſtices choſen as aforeſaid, or either two of them, to be due to him upon the execution, ſhall refuſe to execute a good and lawful deed of releaſe to the debtor or his heirs (in caſe of his deceaſe) of the land or tenement ſo taken in his execution, the debtor or his heirs, executors or adminiſtrators who ſhall make ſuch tender, may bring his action of ejectment againſt the creditor or the tenant in poſſeſſion, under his title; and upon lodging in Court the money tendered, ſhall recover the title and poſſeſſion of the land, as fully as the debtor held the ſame before the extending the execution upon it, together with his coſts of ſuit.

Refuſal to give a deed of releaſe to the debtor, &c.

Provided nevertheleſs, That if the creditor or the tenant in poſſeſſion under him as aforeſaid, ſhall before the bringing the action, have offered the debtor or his heirs, executors or adminiſtrators, to make and execute ſuch deed of releaſe, and ſhall plead the ſame with diſclaimer to the premiſes; then and in ſuch caſe, upon the plaintiff's producing in Court the money ſo tendered, judgment ſhall be given for the plaintiff to recover poſſeſſion of the lands ſo taken in execution, and the defendant ſhall recover his coſt. And when it ſo happens that the real eſtate extended upon, cannot be divided and ſet out by meets and bounds as before preſcribed, or by the deſcription before mentioned, then execution ſhall be extended upon the

When realeſtate cannot be divided, &c execution to be extended upon the rents.

the rents of ſuch real eſtate, and the officer ſhall give ſeizen thereof to the creditor or creditors, his or their attorney; and alſo in caſe of extending execution on rents as aforeſaid, ſhall cauſe the perſon in poſſeſſion and improvement, to attorn and become tenant to ſuch creditor or creditors, and to pay the rent to him or them accordingly; and upon refuſal thereof, to turn the perſon ſo refuſing out of poſſeſſion, and give ſeizen and poſſeſſion of the ſame to the creditor, to hold and enjoy the ſame until it ſhall be redeemed, as by this act is provided. *Provided always*, That in ſuch caſe it ſhall and may be lawful for any debtor or debtors, his or their executors, adminiſtrators or aſſigns, at any time before the debt with intereſt is fully ſatisfied, to tender and pay to the creditor or the tenant in poſſeſſion under him, the full remainder of his debt, intereſt and charges, to be liquidated by the Juſtices of the Peace in manner before provided in this act, and to recover the poſſeſſion of the ſame as before provided. Proviſo.

IV. *And be it further enacted by the authority aforeſaid*, That all rights in equity of redeeming lands, mortgaged reverſions, or the remainders, ſhall be liable to be taken by capias or attachment upon mean proceſs, and by execution upon judgment recovered for the payment of the juſt debts of the mortgager or owner; and any perſon at whoſe ſuit ſuch right in equity of redeeming ſuch mortgaged lands is taken in execution, ſhall have the ſame and as full and ample right and power of redeeming ſuch lands as the mortgager himſelf had or ought to have, and may procure and receive a diſcharge of mortgages, in the ſame manner as the original mortgager might have done, ſaving always to widows their dower in all lands taken from their huſbands by execution. Right of redeeming land liable to be taken by attachment and execution.

V. *And be it further enacted*, That when any goods or chattels ſhall be taken to ſatisfy an execution iſſuing upon a judgment obtained, ſuch goods or chattels ſhall be ſafely kept by the officer, at the expence of the debtor, for the ſpace of four days next after they are ſo taken, and if within that time the owner ſhall not redeem the ſame, by otherwiſe ſatisfying the execution, ſuch goods and chattels ſhall be ſold at publick vendue to the higheſt bidder, having firſt been advertiſed by the poſting up notifications of the time and place of ſale, forty-eight hours before the expiration of the four days, in the town or place where the ſale is to be, and the money ariſing upon ſuch ſale ſhall be applied to the paying charges, and the ſatisfying the execution, and the officer ſhall return the overplus (if any there be) to the debtor. And the officer who is poſſeſſed of the execution, ſhall make return of the ſame with his doings therein, particularly deſcribing the goods taken and ſold, and the ſum for which each article was ſtruck off, and if any officer ſhall be guilty of any fraud in the ſale or in the return, he ſhall be liable to the debtor to pay him five times the ſum defrauded, to be recovered by action of the caſe. Goods taken by execution, to be ſold at publick vendue.

[This act paſſed *March* 17, 1784.]

An Act regulating Bail in Civil Actions.

Bail to ſatisfy the judgment, in caſe of the avoidance of the principal.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That where bail is given on mean proceſs in any civil action for the appearance of the party to anſwer the ſuit, and to abide the order and judgment of the Court thereon, every ſuch perſon or perſons who ſhall thus become bail, ſhall be obliged to ſatisfy the judgment out of his or their own eſtate, in caſe of the principal's avoidance and the return of *non eſt inventus* upon the execution.

Proviſo.

Provided nevertheleſs, That the bail may at any time before final judgment upon the original ſuit, bring the principal into Court, and deliver him into the cuſtody thereof, and be thereby diſcharged of their ſuretiſhip.

Perſons recovering judgment, intitled to a writ of ſcire facias againſt the bail.

II. *And be it further enacted,* That when the principal ſhall avoid, ſo that his goods, lands, or chattels cannot be found to ſatisfy the execution, nor his body found to be taken therewith, the perſon for whom judgment was given, ſhall be entitled to his writ of *ſcire facias* from the ſame Court againſt the bail: And in caſe no juſt cauſe is ſhewn, judgment ſhall be given againſt them for the damages and coſt recovered againſt the principal, with additional damages and coſt, and execution ſhall be awarded againſt them accordingly.

Proviſo.

Provided nevertheleſs, That if the bail ſhall bring their principal into Court before judgment is given upon the *ſcire facias,* and there deliver him to the order of the Court, and ſhall pay the coſt which may have then ariſen upon the *ſcire facias,* then the bail ſhall be diſcharged; and the principal ſhall be committed to goal, there to remain for the ſpace of thirty days, in order to his being taken in execution. And if the creditor ſhall not within thirty days, next after the ſurrender of the principal, take him in execution, the ſheriff ſhall diſcharge him upon his paying the legal priſon fees.

Writ of ſcire facias to be ſerved within one year after judgment.

III. *And it is further enacted,* That no *ſcire facias* ſhall be ſerved upon the bail, unleſs it be done within one year next after the entering up final judgment againſt the principal.

Bail intitled to a remedy againſt the principal.

IV. *And it is further enacted,* That the bail may have their remedy by action on the caſe againſt their principal, for all damages ſuſtained by their becoming his ſureties.

[This act paſſed *June* 30, 1784.]

An Act directing the Proceedings againſt forcible Entry and Detainer.

Two Juſtices qnorum unus, to enquire into forcible entry, &c.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That two Juſtices of the Peace, *quorum unus,* ſhall have authority to inquire by a jury, as is herein hereafter directed, as well againſt thoſe who

who make unlawful and forcible entry into lands or tenements, and with a ſtrong hand detain the ſame, as againſt thoſe who having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the ſame; and if it be found upon ſuch inquiry, that an unlawful and forcible entry hath been made, and that the ſame lands or tenements are held and detained with force and ſtrong hand, or that the ſame after a lawful entry, are held unlawfully and with force and a ſtrong hand, then that ſuch Juſtices ſhall cauſe the party complaining to have reſtitution thereof.

II. *And be it further enacted*, That when complaint ſhall be formally made in writing to any two Juſtices of the Peace, *quorum unus*, of any unlawful and forcible entry into any lands or tenements, and detainer as aforeſaid, or of any unlawful and forcible detainer of the ſame after a peaceable entry, they ſhall make out their warrant under their hands and ſeal, directed to the ſheriff of the ſame county, commanding him in the behalf of the Commonwealth, to cauſe to come before them twelve good and lawful men of the ſame county, each one of whom having freehold lands or tenements of the yearly value of *forty ſhillings*, and they ſhall be impanelled to inquire into the forcible entry or forcible detainer complained of, which warrant ſhall be in the form following, *viz.*

Upon complaint made of forcible entry, to iſſue their warrants.

Commonwealth of *Maſſachuſetts*.

L.S. *S*——, ff.

To the ſheriff of the county of S. GREETING, Form.

WHEREAS complaint is made to us the ſubſcribers, two of the Juſtices of the Peace for and within the county of *S*——, *quorum unus*, by *A. B.* of *D.* in the ſame county, gentleman, that *E. F.* of —— yeoman, upon the day of at *D*— aforeſaid, with force and arms, and with a ſtrong hand, did unlawfully and forcibly enter into and upon a tract of land of him the ſaid *A. B.* in *D*— aforeſaid, containing acres, bounded as follows, *viz.* (or into the meſſuage or tenement of him the ſaid *A. B.* as the caſe may be) and him the ſaid *A. B.* with force and a ſtrong hand as aforeſaid, did expel and unlawfully put out of the poſſeſſion of the ſame, [*Or if it is a forcible detainer only, then the entry ſhall be deſcribed and the detainer inſerted as follows,*] and him the ſaid *A. B.* does unlawfully, unjuſtly, and with a ſtrong hand, deforce and ſtill keep out of the poſſeſſion of the ſame. You are therefore commanded, in behalf of the ſaid Commonwealth, to cauſe to come before us upon the day of at in the ſaid county, twelve good and lawful men of your county, each one of whom having a freehold of the yearly value of *forty ſhillings*, to be impanelled and ſworn to inquire into the forcible entry and detainer (or the detainer) afore-deſcribed. Given under our hands and ſeals the day of in the year of our Lord,

R. S. }
N. O. } Juſtices of the Peace, *quorum unus*.

And

Juſtices to make out their ſummons.

And the ſaid Juſtices ſhall make out their ſummons to the party complained againſt, in form following, *viz.*

Commonwealth of *Maſſachuſetts.*

L. S. *S*——, ſſ.

To the Sheriff of the county of S——,

GREETING.

Form.

W E command you, that you ſummon *E. F.* of to appear before the ſubſcribers, two of our Juſtices of the Peace, within and for our ſaid county of *S*——, *quorum unus*, at a place called in *D*——, in the ſaid county, at . o'clock in the noon; then and there to anſwer to and defend againſt the complaint of *A. B.* to them exhibited, wherein he complains that [*Here the complaint ſhall be recited*] and you are to make a return of this writ with your doings therein unto our ſaid Juſtices, upon or before the ſaid day Witneſs our ſaid Juſtices, the day of in the year of our Lord,

R. S.
N. O.

The party not appearing, the Juſtices to proceed.

Which ſummons ſhall be ſerved upon the party complained againſt, or a copy thereof left at his uſual place of abode, ſeven days excluſively before the day appointed by the Juſtices for the trial; and if after the ſervice of ſuch ſummons the party does not appear to defend, the Juſtices ſhall proceed to the inquiry in the ſame manner as if he was preſent; and when the Jury ſhall appear, the Juſtices ſhall lay before the Jury the exhibited complaint; and ſhall adminiſter the following oath to them, *viz.*

Foreman's oath.

Foreman's oath.

"YOU as foreman of this jury do ſolemnly ſwear, that you will well and truly try whether the complaint of *A. B.* now laid before you, is true according to your evidence." "*So help you God.*"

The other Jurors oath.

The other Jurors oath.

"THE ſame oath which your foreman hath taken on his part, you and every of you ſhall well and truly obſerve and keep." "*So help you God.*"

And if the Jury ſhall find the ſame true, then they ſhall return their verdict in form following:

Form of their verdict.

AT a Court of inquiry held before *R. S.* and *N. O.* Eſquires, two of the Juſtices of the Peace, within and for the ſaid county of *S*——, *quorum unus*, at *D.* in the ſaid county of *S.* upon the day of in the year of our Lord, the Jury upon their oaths do find, that the lands or tenements in *D.* aforeſaid, bounded (or deſcribed) as follows, as

in

in the complaint, upon the day of in the year of our Lord, was in the lawful and rightful poſſeſſion of the ſaid *A. B.* and that the ſaid *E. F.* did upon the ſame day unlawfully with force and arms, and with a ſtrong hand, enter forcibly upon the ſame, (or being lawfully upon the ſame, did unlawfully with force and a ſtrong hand) expel and drive out the ſaid *A. B.* and that he doth ſtill continue wrongfully to detain the poſſeſſion from him the ſaid *A. B.* Wherefore the Jury find upon their oaths aforeſaid, that the ſaid *A. B.* ought to have reſtitution thereof without delay.

And if by accident or challenge, there ſhall happen not to be a full Jury, the ſheriff ſhall fill the panel *de talibus circumſtantibus*, as in other caſes. And if the Jury after a full hearing of the cauſe, ſhall find the complaint laid before them ſupported by evidence, they ſhall all ſign their verdict in form aforeſaid, otherwiſe the defendant ſhall be allowed his legal coſt, and have his execution therefor.

If the Jury ſhall not be full, the ſheriff to fill the panel de talibus circumſtantibus

III. *And it is further enacted*, That if the Jury ſhall return their verdict, ſigned by the whole panel, that the complaint is ſupported, the Juſtices ſhall enter up judgment for the complainant to have reſtitution of the premiſes, and ſhall award their writ of reſtitution accordingly; and no appeal ſhall be allowed from the judgment of the Juſtices.

Judgment to be entered up.

Provided nevertheleſs, That the proceedings may be removed by *certiorari* into the Supreme Judicial Court holden in ſuch county, and be there quaſhed for irregularity, if any ſuch there may be, nor ſhall ſuch judgment be a bar to any after action brought by either party. Which writ of reſtitution ſhall be in form following.

Proceedings may be removed by certiorari.

Commonwealth of *Maſſachuſetts*.

L.S. *S*———, ſſ.

To the ſheriff of our county of S———,

GREETING.

Form of the writ.

WHEREAS at a Court of inquiry of forcible entry and detainer, held at *D.* in our county of *S.* upon the day of in the year of our Lord, before *R. S.* and *N. O.* Eſquires, two Juſtices of the Peace for our ſaid county of *S. quorum unus*, the Jurors impanelled and ſworn by our ſaid Juſtices, did return their verdict in writing, ſigned by each of them, that *A. B.* was upon the day of in the rightful poſſeſſion of a certain meſſuage or tract of land, (as in the verdict returned) and that, &c. (as in the verdict) whereupon it was conſidered by our ſaid Juſtices, that the ſaid *A. B.* ſhould have reſtitution of the ſame. We therefore command you, that taking with you the force of the county if neceſſary, you cauſe the ſaid *E. F.* to be forthwith removed from the premiſes, and the ſaid *A. B.* to have the peaceable reſtitution of the ſame; and alſo that you levy of the goods, chattels, or lands, of the ſaid *E. F.* the ſum of being coſts taxed againſt him on the trial aforeſaid, together with *one ſhilling* and *four pence* more for this writ and your own fees, and for want of ſuch goods, chattels or lands, of the ſaid *E. F.* by you found, you are

commanded to take the body of the ſaid *E. F.* and him commit to our goal, in *L.* in our ſaid county of *S.* there to remain until he ſhall pay the ſum aforeſaid, together with all fees ariſing on the ſervice of this writ, or until he is delivered by order of law, and make return of this writ with your doings therein, within twenty days next coming. Witneſs our ſaid Juſtices, at *D.* aforeſaid, the day of in the year of our Lord, *R. S.*
N. O.

Provided neverthelefs, That this act ſhall not extend unto any perſon who hath had the occupation or been in the quiet poſſeſſion of any lands or tenements by the ſpace of three whole years together, next before, and whoſe eſtate therein is not ended or determined.

Proviſo.

[This act paſſed *June* 30, 1784.]

An Act giving Remedies in Equity.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That in all cauſes brought before the Supreme Judicial Court of this Commonwealth, or before any Court of Common Pleas, to recover the forfeiture annexed to any articles of agreement, covenant, contract, or charter-party, bond, obligation or other ſpecialty, or for forfeiture of real eſtate upon condition, by deed of mortgage or bargain and ſale, with defeaſance, when the forfeiture, breach, or non-performance, ſhall be found by Jury, by the default, or the confeſſion of the defendant, or upon demurrer, the Court before which the action is, ſhall make up judgment therein for the plaintiff to recover ſo much as is due according to equity and good conſcience; but in real actions on mortgage, or bargain and ſale with defeaſance, the judgment ſhall be conditional, that if the mortgager or vender, his heirs, executors or adminiſtrators, ſhall pay unto the mortgagee or vendee, his executors or adminiſtrators, ſuch ſum as the Court ſhall adjudge due, within two months from the time of entering up judgment, with intereſt, then the ſame mortgage, or deed of bargain and ſale, ſhall be void and diſcharged, otherwiſe that the plaintiff ſhall have his writ of poſſeſſion.

How Courts ſhall make up judgment in cauſes brought to recover forfeitures

How judgment ſhall be made up in real actions, on mortgage, &c

II. *And be it further enacted*, That all real eſtates conveyed or pledged by mortgage, or bargain and ſale, with defeaſance, ſhall be redeemable by the mortgager or vender, his heirs, executors, adminiſtrators or aſſigns, on paying the monies borrowed thereon, with intereſt, or performing the condition on which the ſame was mortgaged or conveyed, deducting the rents and profits, the mortgagee or any under him, may have received over and above the repairs and improvements made by him, unleſs the mortgagee, or perſon claiming under him, hath by proceſs of law, or by open and peaceable entry, made in the preſence of two witneſſes, taken actual poſſeſſion thereof, and continued that poſſeſſion peaceably three years.

Real eſtates conveyed by mortgage, &c. how redeemable.

[This act paſſed *November* 4, 1785.]

An

An Act for regulating the Proceedings in Actions of Account.

WHEREAS the proceedings on actions of account are prolix, and require amendment : Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That upon a judgment rendered in any Court of Common Pleas, that the defendant ſhall account, it ſhall be in the power of the party againſt whom ſuch judgment ſhall hereafter be given, to appeal therefrom, if ſuch party ſhall think proper, before the ſame Court proceed to the appointing of auditors ; and in caſe no appeal ſhall be made from the firſt judgment, that the defendant ſhall account an appeal from the final judgment, after the cauſe has been before auditors, ſhall not entitle the original defendant to try the iſſue of bailiff or not bailiff before the Supreme Judicial Court ; but the firſt judgment that the defendant ſhall account ſhall remain in full force, and he ſhall account accordingly ; and in caſe the defendant ſhall not enter and proſecute his appeal from the firſt judgment, the ſame upon complaint may be affirmed ; and auditors may thereupon be appointed in the ſame manner they would have been in the Court of Common Pleas, had no appeal been made from the firſt judgment. Proceedings regulated.

II *And be it further enacted,* That when any perſon againſt whom judgment ſhall be given, that he ſhall account, ſhall unreaſonably refuſe or neglect to appear at the time and place aſſigned by the auditors, or after appearing, ſhall refuſe or neglect to render an account, the auditors may certify ſuch refuſal or neglect to the Court from which their appointment iſſued ; and the ſame Court may thereupon cauſe damages to be aſſeſſed by a jury, and enter up judgment for the damages ſo aſſeſſed, with reaſonable coſts, and award execution therefor ; any law, uſage or cuſtom to the contrary notwithſtanding. When perſons againſt whom judgment ſhall be given, refuſe to appear, damages to be aſſeſſed by a Jury.

[This act paſſed *February* 17, 1786.]

An Act for the Limitation of Real Actions.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That no perſon ſhall hereafter ſue or maintain any *writ of right,* or make any preſcription, title or claim to any lands, tenements or hereditaments, or to any rents, annuities or portions iſſuing therefrom, upon the poſſeſſion or ſeizen of his or their anceſtor, or predeceſſor, beyond the term of three-ſcore years next before the teſte of the ſame writ. Time limited for bring actions, by writ of right.

II. *And be it further enacted by the authority aforeſaid,* That no perſon ſhall ſue, have or maintain any writ of *entry upon diſſeizen* done to any of his anceſtors or predeceſſors ; or any action poſſeſſory upon the poſſeſſion of any of his anceſtors or predeceſſors, for any lands, Actions, by writ of entry upon diſſeizen, limited.

lands, tenements or hereditaments, unleſs the anceſtor or predeceſſor under whom the demandant ſhall claim, ſhould have been ſeized or poſſeſſed of the lands, tenements or hereditaments demanded, within fifty years next before the teſte of the ſame writ, or bringing ſuch action.

Limitations of actions of ſeizen or poſſeſſion.

III. *And be it further enacted by the authority aforeſaid*, That no perſon or body-corporate or politick, ſhall ſue for, have or maintain any action for any lands, tenements or hereditaments, upon his or their own ſeizin or poſſeſſion therein, above thirty years next before the teſte of the ſame writ.

Limitation, by writs of formedon in deſcender, &c.

IV. *And be it further enacted by the authority aforeſaid*, That all writs of *formedon in deſcender*, *formedon in remainder*, *formedon in reverter* of any lands, tenements or hereditaments whatſoever, hereafter to be ſued or brought, ſhall be commenced within twenty years next after the title or cauſe of action firſt deſcended, and at no time after the ſaid twenty years. And no perſon, unleſs by judgment of law, ſhall at any time hereafter make any entry into any lands, tenements or hereditaments, but within twenty years next after his right or title firſt deſcended or accrued to the ſame; and in default thereof ſuch perſon ſo not entering, and his heirs, ſhall be utterly excluded and diſabled from making ſuch entry thereunto. *Provided always*, that when any perſon, that is or ſhall be entitled to any of the writs of *formedon* aforeſaid; or to make an entry, into lands, tenements or hereditaments, ſhall at the time the ſaid right or title firſt deſcended, accrued or fell, be within the age of twenty-one years, feme-covert, non-compos, impriſoned, or beyond ſeas, or without the limits of the United States, that then ſuch perſon ſhall and may bring ſuch ſuit or make ſuch entry at any time within ten years after the expiration of the ſaid twenty years aforeſaid, and not afterwards.

Proviſo.

[This act paſſed *July* 4, 1786.]

An Act for the Limitation of Perſonal Actions, and for avoiding Suits at Law.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That all actions of treſpaſs, *quare clauſum fregit*, all actions of treſpaſs, detinue, trover or replevin, for goods or cattle, all actions of account, and upon the caſe, other than ſuch accounts as concern the trade of merchandize, between merchant and merchant, their factors or ſervants, all actions of debt grounded upon any lending or contract, without ſpecialty, all actions of debt for arrearages of rent, and all actions of aſſault, menace, battery, wounding and impriſonment, or any of them, which ſhall be ſued or brought at any time after the firſt day of *June* next, ſhall be commenced and ſued within the time and limitation, hereafter expreſſed, and not after; *that is to ſay*, the ſaid actions upon the caſe, other than *for ſlander*, and the ſaid actions of account, and the ſaid actions of treſpaſs, debt, detinue

Actions limited.

detinue and replevin, for goods or cattle, and the ſaid actions of treſpaſs, *quare clauſum fregit*, within four years from the firſt day of *June*, one thouſand ſeven hundred and eight-ſeven, or within ſix years next after the cauſe of ſuch actions or ſuits, and not after; and the ſaid actions of treſpaſs, of aſſault, battery, wounding, impriſonment, or any of them, within one year next after the firſt day of *June* aforeſaid, or within three years next after the cauſe of ſuch actions or ſuits, and not after; and the ſaid actions upon the caſe for words, within one year next after the firſt day of *June* aforeſaid, or within two years next after the words ſpoken, and not after.

Provided always, That if upon any of the ſaid actions or ſuits, judgment be given for the plaintiff, and the ſame be reverſed by reaſon of error, or a verdict paſs for the plaintiff, and for matter alledged in arreſt of judgment, the judgment be given againſt the plaintiff, that he take nothing by his plaint, writ or bill, that in all ſuch caſes, the party plaintiff, his executor or adminiſtrator, as the caſe ſhall require, may commence a new action or ſuit, from time to time, within a year after ſuch judgment reverſed, or ſuch judgment given againſt the plaintiff, and not after. Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That in all actions of treſpaſs, *quare clauſum fregit*, hereafter brought, wherein the defendant ſhall in his plea, diſclaim all right, title and intereſt to the land in which the treſpaſs is by the declaration ſuppoſed to be done, and the treſpaſs be by negligence, or involuntary, the defendant ſhall be admitted to plead a diſclaimer, and that the treſpaſs was done by negligence, or involuntary, and a tender or offer of ſufficient amends for ſuch treſpaſs before the action brought, or the defendant may have leave to bring money into Court to ſatisfy the damage the plaintiff has ſuſtained; and in caſe the Jury ſhall not aſſeſs larger damages for the treſpaſs, than the money tendered, or brought into Court, the defendant ſhall recover of the plaintiff his reaſonable coſts. Clauſe reſpecting actions of treſpaſs, when the treſpaſs is ſuppoſed involuntary.

III. *And be it further enacted by the authority aforeſaid*, That in all actions of the caſe, for ſlanderous words, all actions of aſſault and battery, all actions for impriſonment, and all actions for malicious proſecutions, hereafter proſecuted in any of the Courts of record, within this government, if the Jury that enquire of the damages, do find or aſſeſs the damages, under *four pounds*, then the plaintiff or plaintiffs in ſuch actions, ſhall have and recover only one half ſo much coſts, as the damages ſo found or aſſeſſed amount unto, without any further increaſe of the ſame; and in all other actions, where the title to real eſtate does not come in queſtion, in caſe the judgment for the debt or damage be under *four pounds*, the plaintiff ſhall be entitled to only one fourth part ſo much coſt as the debt or damage, unleſs in the opinion of the Court, where the ſame ſhall be determined, the plaintiff had a reaſonable expectation of larger damages than *four pounds*. In actions of the caſe, &c. when the damages are aſſeſſed under 4l. the plaintiff ſhall recover only one half ſo much coſts as the damages amount to.

Provided always, That where judgment ſhall be rendered upon the report of referees, full coſt ſhall be taxed for the party recovering, notwithſtanding the judgment be under *four pounds*, unleſs a Proviſo.

different adjudication reſpecting the coſts ſhall be made from the report itſelf.

Infants, feme coverts, or perſons non-compos-mentis, &c. not barred from bringing actions.

IV. *And be it further enacted by the authority aforeſaid,* That this act ſhall not be underſtood to bar any infant, *feme covert*, perſon impriſoned, or beyond ſea, without any of the United States, or *non compos mentis*, from bringing either of the actions before mentioned, within the term before ſet and limited, for bringing ſuch action, reckoning from the time that ſuch impediment ſhall be removed: And if any perſon or perſons, againſt whom there is, or hereafter ſhall be any cauſe of ſuit, for every and any of the ſpecies of action herein before enumerated, who at the time the ſame accrued, was without the limits of this Commonwealth, and did not leave property or eſtate therein, that could by the common and ordinary proceſs of law be attached, that then and in ſuch caſe, the perſon, that is intitled to bring ſuch ſuit or action, ſhall be at liberty to commence the ſame within the reſpective periods before limited, after ſuch perſons return into this government.

Proviſo.

V. *Provided always, and be it further enacted by the authority aforeſaid,* That this act ſhall not extend, to bar any action hereafter brought upon any note in writing, made and ſigned by any perſon or perſons, and atteſted by one or more witneſſes, whereby ſuch perſon or perſons has promiſed, or ſhall promiſe, to pay to any other perſon or perſons, any ſum of money mentioned in ſuch note, but all actions upon ſuch note or notes, brought by the original promiſee, his executor or adminiſtrator, ſhall and may be maintained, as if this act had never been made, any thing herein contained to the contrary notwithſtanding.

Former laws repealed.

VI. *And be it further enacted by the authority aforeſaid,* That all laws reſpecting the limitation of perſonal actions, made and paſſed prior to the firſt day of *January*, one thouſand ſeven hundred and eighty-ſeven, be and hereby are repealed.

[This act paſſed *February* 13, 1787.]

An Act preſcribing the Method of ſatisfying Judgments in Favour of this Commonwealth.

Warrant of diſtreſs to be iſſued upon all judgments recovered in favour of the commonwealth

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That upon all judgments already recovered, which remain unſatisfied, or that may hereafter be recovered, in the name or for the uſe and benefit of this Commonwealth, for any ſum or ſums of money, in any of the Courts of law within this Commonwealth, a warrant of diſtreſs reciting ſuch judgments reſpectively, ſhall iſſue thereon, which ſhall be directed to ſuch officer or officers as writs of execution are by law to be directed to, who ſhall be thereby directed to levy the monies mentioned and expreſſed in ſuch warrant of diſtreſs, of the money, goods, or eſtate of ſuch debtor or debtors, and for want thereof on his or their body or bodies, and to commit him or them

them unto the common goal in the county where apprehended; and in all ſuch caſes the ſaid ſum or ſums of money mentioned and expreſſed in ſuch warrant of diſtreſs, (where the ſame can be done) ſhall be ſatisfied out of the monies or perſonal eſtate of the debtor or debtors.

II. *And be it further enacted,* That before ſale be made of any perſonal eſtate by virtue of a warrant of diſtreſs to be iſſued as aforeſaid, notice ſhall be given of the time and place of ſale, by poſting up notifications thereof, by the officer executing ſuch warrant, in two or more public places in the town or plantation where the warrant is executed, (within which the ſale ſhall be) four days at the leaſt before the time of ſale.

Notice to be given of the ſale of goods taken by warrant of diſtreſs.

III. *And be it further enacted by the authority aforeſaid,* That when it ſhall be neceſſary to diſpoſe of real eſtate to ſatisfy ſuch warrant of diſtreſs, in whole or in part; the officer executing the ſame is hereby fully authorized, empowered and directed, to make, execute, acknowledge, and deliver to the higheſt bidder, good and ſufficient deed or deeds of any real eſtate ſold at public vendue, in manner as hereafter expreſſed.

Real eſtate taken by warrant of diſtreſs, to be ſold to the higheſt bidder.

IV. *Provided always, and it is enacted by the authority aforeſaid,* That the officer executing ſuch warrant of diſtreſs, when real eſtate ſhall be taken as aforeſaid, ſhall give public notice of the time and place of ſale, by poſting up notifications thereof in two or more public places in the town or plantations where the real eſtate lies, thirty days before the time of ſale, and alſo in two or more public places in two adjoining towns. And where it ſhall ſo happen, that the ſum for the ſatisfaction of which a warrant of diſtreſs ſhall be levied on any real eſtate as aforeſaid, ſhall amount to the ſum of *one hundred pounds*, the officer executing the ſame, ſhall, in addition to the notifications aforeſaid, cauſe an advertiſement of the time and place of ſuch ſale, to be publiſhed in ſome public news-paper printed in the county where ſuch real eſtate lies, three weeks ſucceſſively, before the day of ſale, if any ſuch news-paper ſhall be there printed, but if not, then ſaid officers ſhall cauſe advertiſement in manner aforeſaid, to be publiſhed in a news-paper printed in the Commonwealth neareſt the county where ſuch land lies. And in caſe the eſtate notified for ſale as aforeſaid, ſhall not be diſpoſed of at the time and place appointed, the officer ſhall adjourn the vendue, not exceeding three days, and ſo from time to time until the ſale ſhall be compleated.

Proviſo.

V. *And be it further enacted by the authority aforeſaid,* That deeds made and executed as aforeſaid, ſhall be as effectual to all intents and purpoſes, to convey the debtor's title in ſuch real eſtate to the vender, his heirs, executors, or adminiſtrators, as if the ſame had been made or executed by ſuch debtor or debtors.

Deeds executed in purſuance of this act, to be effectual.

VI. *Provided always, and be it enacted by the authority aforeſaid,* That every ſuch debtor ſhall have liberty to redeem ſuch real eſtate, within the term of one year from the time of executing deed or deeds thereof in manner aforeſaid, by paying the ſum at which the ſame may be ſold, together with the intereſt thereof, to the perſon who purchaſed the ſame, or to his heirs or aſſigns.

Equity of redemption allowed within one year.

VII.

Warrants of diſtreſs to be ſealed, &c. in the ſame manner as other Judicial writs.

VII. *And be it further enacted by the authority aforeſaid,* That all warrants of diſtreſs to be iſſued as aforeſaid, ſhall be under the ſeal of the Court from whence they iſſue, be ſigned by the Clerk, and bear teſt the chief or firſt Juſtice thereof, and be made returnable in the ſame time and manner other Judicial writs are, or by law may be. And whenever any ſuch warrant of diſtreſs ſhall be returned ſatisfied in part only, an alias or pluries warrant of diſtreſs for the ſum remaining due ſhall iſſue; and the Clerks of the reſpective Courts ſhall be intitled to take and receive the ſame fees for the ſaid warrants of diſtreſs, as for writs of execution, and no more.

Proviſo where judgments are recovered againſt debtors to perſons whoſe eſtates may be confiſcated to the Commonwealth.

VIII. *Provided always, and it is further enacted by the authority aforeſaid,* That in all caſes where judgment as aforeſaid ſhall be recovered againſt any perſon or perſons, as debtor or debtors to any perſon or perſons where eſtate or eſtates have been or may be confiſcated, become forfeit, or be otherwiſe transferred to the uſe of the Commonwealth, executions ſhall be levied in the ſame manner as is or may be by law provided in caſe of judgment recovered by one individual againſt another in their private capacities reſpectively, any thing herein contained to the contrary notwithſtanding.

Attorney-General veſted with all the powers of the creditors in ſuch caſes.

IX. *And be it further enacted,* That the Attorney-General of the ſaid Commonwealth for the time being, or any perſon who may be by him appointed for the purpoſe, or any agent who may be ſpecially appointed by the General Court, ſhall reſpectively be veſted with all the powers in extending and levying executions on the perſons or eſtates of any ſuch debtor or debtors, as the creditor or creditors would have had, provided no ſuch confiſcation, forfeiture, or transfer, had taken place.

[This act paſſed *March* 17, 1784.]

An Act preſcribing the Form of the Writ of *Audita Querela*, and of the Proceedings thereupon.

Preamble.

WHEREAS Juſtice cannot in many caſes be duly adminiſtered to the ſubjects of this Commonwealth, without proſecuting a writ of Audita Querela; *and whereas there is no ſtatute in force in this Commonwealth directing the form of the ſaid writ, and of the proceedings thereupon:* Therefore

In caſes where by law a writ of audita querela lyeth.—

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That in all caſes where by law a writ of *Audita Querela* lyeth, the ſame may be ſued out in the form of a writ of attachment, or a writ of ſummons, at the election of the complainant: And in all caſes where the ſaid writ is brought to ſet aſide or annul any proceedings had upon a writ of execution, the ſaid writ of *Audita Querela* ſhall be ſued out of and be returnable to the Court to which the ſaid writ of execution was returnable; and in all other caſes the ſaid writ ſhall be ſued out of and be returnable to the Inferior Court of Common

Common Pleas, to be holden in ſuch county whereof one of the parties thereto is an inhabitant or reſident; unleſs where the complainant is not an inhabitant or reſident within this Commonwealth; and in ſuch caſe the ſaid writ may be ſued out of and be returnable to any Inferior Court of Common Pleas within this Commonwealth, at the election of the complainant.

II. *And be it further enacted by the authority aforeſaid*, That in all caſes the ſaid writ of *audita querela* ſhall be under the ſeal of the Court out of which the ſame ſhall iſſue, ſigned by the clerk thereof, and teſted by the firſt Juſtice who is not a party to the ſame; and the ſaid writ, before the ſervice thereof, ſhall be indorſed by one or more of the complainants, or by his or their attorney, by writing his or their names on the back thereof towards the bottom; and ſuch indorſer ſhall be liable to pay to the reſpondent ſuch coſts as he ſhall have final judgment for in that ſuit, to be recovered by action of debt.

The writ of audita querela to be under the Seal of the Court.

III. *And be it further enacted by the authority aforeſaid*, That the ſaid writ of *audita querela* may be ſerved upon the adverſe party in the ſame manner as writs of review are directed by law to be ſerved; and upon default of the reſpondent after ſuch ſervice, without appearance, the Court may proceed to hear and try the ſame ſuit, and thereupon to proceed to final judgment and execution, in the ſame manner as by law they are authorized when the reſpondent after appearance becomes defaulted. And in all caſes after the ſaid writ is returned ſerved as aforeſaid, the Court in which the ſuit thereupon is pending, ſhall have full power to hear and try the ſaid cauſe, and thereupon to proceed to judgment and execution, according as to law and juſtice doth appertain.

How the ſaid writ of audita querela may be ſerved.

IV. *And be it further enacted by the authority aforeſaid*, That where the ſaid writ of *audita querela* ſhall be iſſued in the form of a writ of attachment, the form thereof may be as followeth,—

Form.

ſſ. The Commonwealth of *Maſſachuſetts*.
L.S. *To the ſheriff of our county of his under ſheriff or deputy.* GREETING.

WE command you to attach the goods or eſtate of *A. B.* of to the value of *pounds*, and for want thereof, to take the body of the ſaid *A. B.* if he may be found in your precinct, and him ſafely keep, ſo that you have him before our Juſtices of our Court next to be holden at within and for our county of on the Tueſday of then and there in our ſaid Court, to anſwer unto the grievous complaint of *C. D.* of who complaineth and ſaith —*(here let the declaration be inſerted)*— by all which the ſaid *C. D.* as he ſaith, is damaged the ſum of *pounds*, as ſhall then and there be made to appear. And have you there this writ with your doings therein. Witneſs, *W. C.* Eſquire, at this day of in the year of our Lord

A. H. Clerk.

V. *And be it further enacted by the authority aforeſaid,* That the officer to whom ſuch writ is directed, ſhall have the ſame power and authority, and be under the ſame obligations by virtue of ſaid writ, to attach the body of the reſpondent, or his goods or eſtate, as he hath and is under by virtue of any other writ of attachment ſued out purſuant to the laws of this Commonwealth and to him directed; and in the ſame manner and under the ſame reſtrictions and regulations as are by law provided in other caſes, the body of the reſpondent ſhall be holden to bail, and the goods or eſtate ſo attached, be liable to be taken in execution.

VI. *And be it further enacted by the authority aforeſaid,* That where the goods or eſtate of the reſpondent are attached by virtue of the writ of *audita querela,* the ſummons to give him notice of the ſuit may be in the form following.

Form of the ſummons to give notice.

L.S. ——ſſ. The Commonwealth of *Maſſachuſetts.*
To *A. B.* of GREETING.

W E command you that you appear at our Court next to be holden at within and for our county of on the Tueſday of then and there to anſwer to the grievous complaint of *C. D.* of *(here recite an abſtract of the declaration)* which complaint is to be heard and tried at the ſaid Court; and your goods or eſtate, are attached to the value of *pounds,* to ſatisfy the judgment which the ſaid *C. D.* may recover upon the aforeſaid trial. Fail not of appearance at your peril.

Witneſs, *W. C.* Eſquire, at the day of in the year of our Lord

A. H. Clerk.

VII. *And be it further enacted by the authority aforeſaid,* That where the writ of *audita querela* ſhall be iſſued in the form of a writ of ſummons, the form thereof may be as followeth.

Form of a writ of ſummons to be iſſued.

L.S. ——ſſ. The Commonwealth of *Maſſachuſetts.*
To the ſheriff of our county of his under ſheriff or deputy, GREETING.

W E command you that you ſummons *A. B.* of if he may be found in your precinct, to appear before our Juſtices of our Court next to be holden at within and for our county of on the Tueſday of then and there in our ſaid Court to anſwer to the grievous complaint of *C. D.* of who complaineth and ſaith, *(here let the declaration be inſerted)* by all which the ſaid *C. D.* as he ſaith, is damaged the ſum of *pounds,* as ſhall then and there be made to appear. And have you there this writ with your doings therein. Witneſs, *W. C.* Eſquire, at this day of in the year of our Lord

A. H. Clerk.

Where the ſheriff or his deputy is a party.

VIII. *And be it further enacted by the authority aforeſaid,* That where the ſheriff of any county in which the writ of *audita querela* is to be ſerved, or his deputy, is a party to the ſaid writ, or to the execution

execution iſſued upon the judgment recovered thereon, the ſame ſhall be directed to the coroner or his deputy, who ſhall ſerve and execute the ſame in due form of law.

And to avoid circuity of actions and a multiplicity of law ſuits:

IX. *Be it further enacted by the authority aforeſaid*, That where the complainant in any writ of *Audita Querela* may by other ſubſequent action at law, recover of the reſpondent any recompenſe in damages or otherwiſe, for the wrongs done him by the ſervice of ſuch execution for the ſetting aſide and annuling of the proceedings upon which the ſaid writ of *audita querela* is brought, in all ſuch caſes the complainant may have the ſame remedy upon his writ of *audita querela*, and in his declaration therein may declare for the ſame recompence in damages or otherwiſe, and judgment ſhall be rendered and execution iſſue thereupon accordingly.

How general iſſue may be pleaded.

X. *And be it further enacted by the authority aforeſaid*, That the general iſſue in all actions proſecuted on writs of *audita querela* may be the plea of not guilty; and upon ſuch plea being duly pleaded by the reſpondent, either party may give any ſpecial matter in evidence, by which the truth and juſtice of the cauſe may be known.

Proviſo.

Provided nevertheleſs, That the reſpondent may plead any ſpecial matter in bar, or the ſaid general iſſue, at his election.

In caſes where ſaid writ is returnable and judgment given.

XI. *And be it further enacted by the authority aforeſaid*, That in caſes where the writ of *audita querela* is returnable to the Inferior Court of Common Pleas in any county within this Commonwealth, and judgment given in ſaid Court, the party aggrieved thereat may appeal to the Supreme Judicial Court of this Commonwealth, next to be holden within the ſame county; the ſaid appeal to be granted and proſecuted under the ſame regulations and reſtrictions as appeals in other actions from the judgment of any Inferior Court are to be granted and proſecuted; and when the appellant ſhall fail to proſecute his appeal with effect, the Supreme Judicial Court may upon complaint filed by the appellee, affirm the judgment rendered by the Inferior Court, with additional damages and coſts, and award execution accordingly.

And whereas the complainant in the writ of *audita querela* may at the time of ſuing out the ſame, be in goal by virtue of the execution, the proceedings upon which the ſaid writ of *audita querela* is brought to ſet aſide and annul: And whereas in ſuch caſes the enlargement and liberation from goal of the complainant may be neceſſary to enable him effectually to proſecute his ſaid writ:

In caſes where the complainant is in goal.

XII. *Be it enacted by the authority aforeſaid*, That in caſes where the complainant in ſuch writ of *audita querela* is in goal by virtue only of ſuch execution, the Court to which ſuch writ is returnable, or the Supreme Judicial Court, upon the appeal, may, at their diſcretion, according to the circumſtances of the caſe, enlarge and liberate the complainant from goal, and admit him to bail upon his ſureties (being ſufficient freeholders within the Commonwealth, to be approved of by the Court) giving bond, together with the complainant, jointly and ſeverally, to the reſpondent, in ſuch penalty as ſhall be directed by the Court, conditioned, if final judgment be rendered for

for the reſpondent, that the complainant ſhall within thirty days after the entering ſuch final judgment, ſurrender himſelf to the goal keeper, to be detained in cuſtody under the ſame execution, or within that time ſatisfy the ſame execution, and alſo ſuch final judgment as ſhall be rendered as aforeſaid for the reſpondent. And if the ſaid complainant ſhall ſurrender himſelf to the goal keeper as aforeſaid, he ſhall be in cuſtody under ſaid execution, as fully and to all intents and purpoſes, as if the ſaid writ of *audita querela* had not been brought, nor the ſaid complainant admitted to bail.

All judgments rendered by the Supreme Judicial Court, to be final by the ſaid writ.

XIII. *And be it further enacted by the authority aforeſaid*, That all judgments rendered by the Supreme Judicial Court in actions proſecuted by writs of *audita querela*, ſhall be final, without being ſubject to reverſal or alteration by any proceedings upon writs of review thereafter to be ſued or proſecuted; and all ſuch writs of review ſhall by the ſame Court *ex officio* be quaſhed.

[This act paſſed *May* 18, 1781.]

An Act directing the Proceſs in *Habeas Corpus*.

Preamble

WHEREAS the writ commonly called the writ of habeas corpus, *is a writ of right to which the citizens of this Commonwealth are, by conſtitution and the law of the land, at all times entitled, to obtain relief from every wrongful impriſonment, or unlawful reſtraint of perſonal liberty:*

Perſons impriſoned, &c. may complain in writing to the ſupreme judicial court.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That any perſon impriſoned in any common goal, or otherwiſe reſtrained of his perſonal liberty, by any officer or officers, or any other perſon or perſons, for any cauſe or upon any pretence whatever, he or any perſon in his behalf may complain, in writing, to the Supreme Judicial Court of this Commonwealth in term-time in any county, or to any one or more of the Judges thereof in the vacation time of the ſaid Court; and upon ſuch complaint, and upon view of the copy of the warrant (if any there be) by which ſuch perſon ſtands committed, or upon his affidavit certified by a Juſtice of the Peace, or on the oath of the perſon applying on his behalf, or any other credible witneſs, or upon the affidavit of ſuch witneſs certified as aforeſaid, if he lives more than twenty miles from the Court or Judge applied to, that a copy of ſuch warrant has been demanded and denied; the ſaid Court in term-time, and the ſaid Judge in the vacation, hereby are reſpectively authorized and required to award a writ of *habeas corpus* directed to the officer or perſon impriſoning or reſtraining the complainant, returnable forthwith to ſuch Court or Judge who awarded the ſame, except the complaint be in favour of perſons committed for treaſon or felony, or for ſuſpicion thereof, or as acceſſary to the latter before the fact, plainly and ſpecially expreſſed in the warrant of commitment, or perſons convict or in execution by legal proceſs, criminal or civil, or committed by meſne proceſs in any civil action for want of reaſonable bail, and

Upon ſuch complaint, court authorized to award a writ of *habeas corpus*, except in certain caſes.

perſons

perſons with regard to whom the benefit of the ſaid writ ſhall be ſuſpended by the legiſlature, agreeable to the conſtitution.

II. *And be it further enacted*, That ſuch writ, when awarded by the ſaid Court, ſhall be ſigned by the Clerk, teſted by the firſt Juſtice who is not party thereto, and ſealed with the ſeal thereof; but when awarded by any Judge in the vacation, ſhall only be under the hand and ſeal of ſuch Judge, and ſhall direct the place to which the complainant ſhall be brought; and the form of ſuch writ, when awarded by the ſaid Supreme Judicial Court, ſhall be as follows, *viz.*

When awarded, how teſted, &c.

Commonwealth of *Maſſachuſetts*.

S——— ſſ.

L. S. *To* Greeting.

WE command you that the body of *A. B.* of in our priſon, under your cuſtody, (or by you impriſoned and reſtrained of his liberty, as the caſe may be) as it is ſaid, together with the day and cauſe of his taking and detaining, by whatſoever name the ſaid *A. B.* ſhall be called or charged, you have before our Juſtices of our Supreme Judicial Court, holden at within and for the county of immediately after the receipt of this writ, to do and receive what our ſaid Juſtices ſhall then and there conſider concerning him (or her) in this behalf; and have there this writ. Witneſs, *W. C.* Eſq. at this day of in the year of our Lord, 17

Clerk.

Form of the writ.

And the like form ſhall be uſed by the Judge, *mutatis mutandis*, when ſuch writ ſhall be awarded by him; *provided*, that nothing in this act contained ſhall be conſtrued to hinder or reſtrain the ſaid Supreme Judicial Court, in term-time, or any one or more Judges thereof, in the vacation, from bailing any perſon wherever and for whatever offence committed, at their diſcretion, whenever the circumſtances of the caſe ſhall appear to require it; perſons committed by the Governour and Council, Senate or Houſe of Repreſentatives, agreeable to, and for the cauſes mentioned in the conſtitution, always excepted.

Supreme Judicial Court, in term-time, or Judges in the vacation, not reſtrained from bailing any perſon.

III. *And be it further enacted by the authority aforeſaid*, That when any perſon ſhall bring and offer ſuch writ of *habeas corpus*, to the officer or perſon to whom the ſame ſhall be directed, he ſhall receive the ſame; and upon payment or tender of ſuch charges for bringing the complainant from the place of impriſonment, as the Court or Judge who grants the writ ſhall order, if the perſon complaining be confined in a common gaol, or under the cuſtody of an officer, otherwiſe, without ſuch payment or tender, to the place mentioned in the writ, ſuch officer or perſon ſhall have the body of the complainant before the Court or Judge awarding the writ (unleſs committed and detained for ſome one or more of the cauſes aforeſaid) at the place therein mentioned, within three days, if within twenty miles from the place of impriſonment; if more than twenty, but within one hundred miles, then within ten days; if above one hundred miles, then within twenty days after the receipt thereof;

Officer or perſon to whom the writ is directed, ordered to receive the ſame; and upon payment or tender of charges, to have the body of the complainant before the Court or Judge awarding the writ, &c.

thereof; and ſhall then return the ſame, and certify thereon the true and all the cauſe or cauſes of his or her taking and detaining.

Writs awarded by any Judge in the vacation, not returned before the ſitting of the Court, may be returned, &c.

III. *And be it further enacted by the authority aforeſaid*, That if after the awarding ſuch writ by any Judge of the ſaid Supreme Judicial Court, in the vacation, but before the return thereof the ſaid Court ſhall ſit in any county, the ſaid writ, with the body of the complainant, and cauſes of taking and detaining, may be returned, had and certified to the ſaid Court by the Judge who awarded the ſame: But if after awarding ſuch writ by the ſaid Court, in term-time, but before the return thereof the ſaid Court ſhall riſe, or be adjourned, the ſame, with the body of the complainant, and cauſes of taking and detaining, ſhall be returned, had and certified before ſome Judge of the ſaid Supreme Judicial Court.

Perſons brought before the Court or any Judge, by writ of *habeas corpus*, what proceedings ſhall be had.

IV. *And be it further enacted by the authority aforeſaid*, That when any perſon ſhall be brought, by writ of *habeas corpus* as aforeſaid, before the ſaid Court, or any Judge thereof, ſuch Court or Judge ſhall, within three days after, proceed to examine the ſaid cauſes; and if committed for an offence or cauſe bailable by law, they ſhall bail him by recognizing him with ſufficient ſurety or ſureties in a reaſonable ſum, having regard to his quality and circumſtances, and the nature of the offence, to appear at ſuch Court as ſhall have cognizance of the offence; and ſhall certify their cognizance into ſuch Court, if committed upon meſne proceſs in any civil action for want of bail, and the bail required ſhall appear exceſſive, it ſhall be aſcertained what bail is reaſonable, and he ſhall be diſcharged on giving the ſame: But if it ſhall appear that the complainant is impriſoned or reſtrained without due order of law, or ſufficient cauſe, he ſhall be diſcharged from ſuch commitment or reſtraint.

Penalty when any officer neglects after demand made, to deliver a copy.

V. *And be it further enacted*, That if any officer, in whoſe cuſtody any priſoner ſhall be, ſhall not within ſix hours after demand made, deliver ſuch priſoner a true copy of the warrant or proceſs by which he ſtands committed, ſuch officer ſhall forfeit to the party grieved, the ſum of *fifty pounds*.

Officers, &c. refuſing to receive writs, &c.

VI. *And be it further enacted*, That if any officer or perſon, to whom any writ of *habeas corpus* ſhall be directed, ſhall refuſe to receive the ſame, or, after receipt thereof, ſhall refuſe or neglect to yield ſuch obedience thereto as this act requires (the complainant performing the conditions required) unleſs prevented by the ſickneſs of the priſoner, or other neceſſity, he, for ſuch refuſal or neglect, in each and every particular, ſhall forfeit, to the party grieved, the ſum of *one hundred pounds*; and for any falſe return to ſuch writ, ſhall be further liable to the action of the party.

Penalty for refuſing to yield obedience.

Court or Judge may further puniſh diſobedience as for a contempt.

VII. *And be it further enacted*, That the Court or Judge reſpectively may further puniſh every diſobedience to ſuch writs as for a contempt, and compel obedience thereto, by proceſs of attachment.

And in order to prevent any attempts that might be made to deprive any priſoner of the benefit of his *habeas corpus*, by ſhifting the cuſtody of ſuch priſoner from one priſon or officer to another, or ſending him away:

VIII.

VIII. *Be it enacted by the authority aforeſaid*, That every perſon, duly ordered to be committed for any criminal or ſuppoſed criminal matter, ſhall be carried as ſoon as may be, and confined in ſome common goal, and not elſewhere (except perſons ſent to the work-houſe or houſe of correction for due cauſe) and ſhall not be delivered from one officer to another, except for the more eaſy and ſpeedy conveyance of the priſoner to ſuch goal, nor be removed, without his conſent, from one county to another, unleſs by *habeas corpus*, or ſome other legal writ, under the penalty of forfeiting, for every offence, to the party grieved, the ſum of *one hundred pounds*.

Removal of priſoners,

IX. *And be further enacted*, That if any perſon ſhall tranſport or carry, or cauſe to be tranſported or carried, any ſubject of this Commonwealth, or other perſon lawfully reſiding and inhabiting therein, to any part or place without the limits of the ſame, by land or water, without his conſent or voluntary agreement; or in order to remove ſuch perſon from one part of the State to another part of the ſame, except for the purpoſe of defending the ſame in time of war, agreeable to the conſtitution, or except ſuch perſon be ſent by due courſe of law, to anſwer for ſome criminal offence committed in ſome other of the United States of *America*, every perſon ſo offending, and every perſon aiding and abetting the ſame, being duly convicted thereof before the Supreme Judicial Court, ſhall be puniſhed by fine not exceeding *five hundred pounds*, by whipping not exceeding thirty-nine ſtripes, and impriſonment not exceeding two years, or any one or more of thoſe puniſhments, at the diſcretion of the ſaid Court, and be further liable to the action of the party grieved.

Perſons tranſporting anyſubject of this Commonwealth to any place without the limits of the ſame, without his conſent.

Puniſhment.

X. *And be it further enacted by the authority aforeſaid*, That every maſter or commander of any outward bound ſhip or veſſel that ſhall hereafter carry or tranſport out of this government, any perſon under the age of twenty-one years, or any apprentice, or any indented ſervant, to any parts beyond ſea, without the conſent of his parents, maſter or guardian, ſhall forfeit and pay the ſum of *fifty ponnds*; one moiety to the uſe of this government, and the other moiety to him or them that ſhall ſue for the ſame; and be further liable for the damages ſuſtained by the parent, maſter or guardian, in a ſpecial action of the caſe.

Maſters of veſſels carrying out of this government any perſon under the age of 21 years,

Penalty.

XI. *And be it further enacted by the authority aforeſaid*, That no perſon enlarged by *habeas corpus* ſhall again be impriſoned or reſtrained of his liberty for the ſame cauſe, unleſs he ſhall be indicted therefor, or convicted thereof, or ſhall neglect to find bail when ordered thereunto by ſome Court of record. *Provided*, That no penalty eſtabliſhed by this act ſhall be conſtrued to bar any action at common law for falſe impriſonment or unlawful reſtraint. And when any perſon ſhall be unlawfully carried out of the government, or impriſoned in any ſecret place, any other perſon ſhall be permitted to appear for him in any action brought in his name; provided ſuch perſon ſhall ſtipulate for the payment of coſts, as the Court ſhall direct.

No perſon enlarged by *habeas corpus*, ſhall again be impriſoned for the ſame cauſe, unleſs indicted therefor.

XII.

Any perſon held in priſon upon ſuſpicion of having committed a capital crime, ſhall be bailed or diſcharged, if not indicted at the ſecond term.

XIV. *And be it further enacted,* That any perſon who ſhall be held in priſon upon ſuſpicion of having committed a crime for which he may have ſentence of death paſſed upon him, ſhall be bailed or diſcharged, if he is not indicted at the ſecond term of the ſitting of the Supreme Judicial Court in the county where the crime is alledged to have been committed, when there are two terms a year in ſuch county: And in ſuch counties as have but one Supreme Judicial Court in a year, the defendant ſhall be bailed or diſcharged, if he is not indicted at the firſt term: provided ſuch perſon ſhall have been held in priſon for the ſpace of ſix months next preceding the day of the Court's ſitting. And when any perſon ſhall be held in priſon under indictment, he ſhall be tried or bailed at the firſt term next after his indictment, if he demands the ſame, unleſs it ſhall appear to the Court that the witneſſes, on behalf of the government, have either been enticed away, or detained by ſome inevitable accident from attending. And all perſons under indictment for felony, ſhall be bailed or tried at the ſecond term after the bill ſhall be returned, if they demand it.

Perſons held in priſon under indictment, ſhall be tried or bailed at the firſt term, if they demand the ſame.

[This act paſſed *March*, 16, 1785.]

An Act eſtabliſhing the Right to, and the Form of the Writ *de Homine Replegiando*, or Writ for Replevying a Man.

Perſons impriſoned ſhall be intitled, as of right, to the writ de homine replegiando, unleſs, &c.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That every perſon within this Commonwealth, who ſhall be impriſoned, confined, or held in dureſs, ſhall be intitled as of right, to the writ, *de homine replegiando*, and to be thereby delivered; unleſs while the writ of *habeas corpus* is ſuſpended, by the Legiſlature, he ſhall ſtand committed by the ſpecial order of the Supreme Executive power of the State, as dangerous to the public ſafety, or by the ſame, or by ſome ſubordinate authority of the government, for treaſon, the death of man, counterfeiting the common currency, houſe-burning, burglary, robbery, or ſome other offence, for which, if he is convicted, he may ſuffer death or baniſhment, or unleſs he is held in execution, upon judgment of debt, forfeiture, withernam, or by diſtreſs for taxes, or under ſentence, after conviction, for fine, coſts, or in puniſhment.

And where any perſon ſtands committed by lawful authority, for any crime, for which he may not ſuffer death, or otherwiſe than is above in this act ſpecified, the writ ſhall be in form following, *viz.*

Commonwealth of *Maſſachuſetts.*

Form of the writ where any perſon ſtands committed by lawful authority.

S—— ſſ.

L.S. *To the ſheriff of our county of* S. GREETING.

WE command you, that juſtly and without delay, you cauſe to be replevied *C. D.* who, (as it is ſaid) is taken and detained in our

our goal in *N.* within our ſaid county of *S.* by the commitment of *A. B.* that he the ſaid *C. D.* may be at our Supreme Judicial Court, next to be holden at within our county aforeſaid, upon the Tueſday of next, then and there in our ſaid Court, to anſwer to all ſuch things, as ſhall be then and there objected againſt him, more eſpecially, for the offence for which he ſtands committed, unleſs while the right of *habeas corpus* is ſuſpended by the Legiſlature, he ſtands committed, by the Supreme Executive power of the State, as dangerous to the public ſafety, or by the ſame or ſome ſubordinate authority of the government, for treaſon, the death of man, counterfeiting the common currency, houſe-burning, burglary, robbery, or ſome other offence, whereof if he is convicted, he may ſuffer death, or baniſhment; or unleſs he is holden under execution upon judgment, for debt, forfeiture, or in withernam, or by diſtreſs for taxes, or under ſentence, after conviction, for fine, or coſts, or in puniſhment. Witneſs *W. C.* Eſq. at the day of in the year of our Lord

L. M. Clerk.

And where the plaintiff is held without order of law, the writ ſhall be in form following, *viz.*

Commonwealth of *Maſſachuſetts.*

S—— ſſ.

L.S. *To the ſheriff of our county of S.* GREETING. Form of the writ where the plaintiff is held without order of law.

WE command you, that juſtly and without delay, you cauſe to be replevied, *C. D.* who, (as it is ſaid) is taken and detained in a place, called *N.* within our ſaid county of *S.* by the dureſs of *G. H.* that he the ſaid *C. D.* may appear at our Court of Common Pleas, next to be holden at within and for our ſaid county of *S.* upon the Tueſday of next, then and there in our ſaid Court to demand right and juſtice, againſt the ſaid *G. H.* for the dureſs and impriſonment aforeſaid, and to proſecute his replevin as the law directs: Provided, that if he the ſaid *C. D.* is held by the ſaid *G. H.* as his ward, infant, or one to whoſe ſervice he is intitled, or as a principal, to whom the ſaid *G. H.* is bail, and he ſhall make you ſecure, by good and lawful mainpernors, for his appearing at our Court aforeſaid, to proſecute his replevin againſt the ſaid *G. H.* and to have his body at the ſame Court, ready to be re-delivered if ordered thereunto, and to pay all ſuch damages and coſts as ſhall be then and there awarded againſt him; then, and not otherwiſe, you are to deliver him; and if the ſaid *C. D.* is by you delivered, at any day before the ſitting of our ſaid Court, you are to ſummon the ſaid *G. H.* by ſerving him with an atteſted copy of this writ, that he may appear at our ſaid Court, to anſwer unto the ſaid *C. D.* upon his replevin. Witneſs *T. N.* Eſq. at *B.* the day of in the year of our Lord,

X. Y. Clerk.

II. *And be it enacted,* That if the plaintiff ſtands committed for any crime, not before in this act mentioned, or for any other offence, whereof, Clauſe reſpecting the return of the writ.

whereof, if he is convicted, he may not have ſentence of death or baniſhment, thereof paſſed upon him, he ſhall have his writ from the Clerk of the Supreme Judicial Court, fourteen days before the return day of the ſame, and the ſame writ ſhall be made returnable in the ſame county, where the impriſonment happens, and unto the next Supreme Judicial Court, to be there holden; but if he is held by any perſon, without due order of law, he ſhall have his writ from the Clerk of the Court of Common Pleas, of the county wherein he is held, returnable fourteen days, at the leaſt, from the day of the date; and where the plaintiff is delivered by a writ, returnable into the Supreme Judicial Court, having been committed for any offence, and from which commitment he is repleviſable, he ſhall, before he is delivered, recognize before the ſheriff of the county, in perſon, with ſufficient ſurety or ſureties, in a reaſonable ſum, for his appearance at the ſame Court, to anſwer, abide and perform the order and ſentence of the ſame; which recognizance ſhall be returned into Court, by the ſheriff; and when the plaintiff ſhall be delivered by a writ returnable into the Court of Common Pleas, he ſhall before his deliverance, give bond to the uſe of the defendant, with ſufficient ſurety or ſureties, at the diſcretion of the ſheriff, to appear at the Court, to which the writ is returnable, and there to proſecute his replevin againſt the defendant, to have his body there ready to be re-delivered, as the Court ſhall order, and to pay all damages and coſts, that may be awarded againſt him; and the ſheriff ſhall be anſwerable, if the ſureties ſhall prove inſufficient, unleſs they are ſuch as the defendant agrees to.

Plaintiff to recognize.

III. *And it is further enacted*, That if the plaintiff ſhall not proſecute, or in proſecuting, ſhall be unable to ſupport his replevin, the defendant ſhall recover his reaſonable coſts: And if it ſhall be found upon the trial, that the plaintiff is the ward or infant of the defendant, or that he the ſaid defendant, is intitled to the ſervice of the plaintiff, or that the defendant is bail to the plaintiff, then the defendant ſhall have judgment againſt the plaintiff, for a re-delivery of his body, and for ſuch damages as the Jury ſhall aſſeſs againſt the plaintiff, with reaſonable coſts.

If the plaintiff ſhall not proſecute, or is unable to ſupport his replevin, the defendant ſhall recover coſts.

IV. *And it is further enacted*, That if the ſheriff ſhall return upon the writ, *de homine replegiando*, iſſuing from the Court of Common Pleas, that the defendant hath eloigned the plaintiff's body, ſo that he cannot deliver him, then the plaintiff ſhall on motion of the Court, have a capias in withernam, to take the defendant's body, and to keep the ſame, until he ſhall produce the plaintiff, to be delivered, according to the commandment of the original writ.

If the ſheriff ſhall return upon the writ, that the defendant hath eloigned the plaintiff's body, &c.

Provided nevertheleſs, That if the defendant ſhall give full and ſufficient bail, for his appearance at the Court whereunto the writ is returnable, then and there to traverſe the return of the ſheriff, upon the writ *de homine replegiando*, that the ſheriff ſhall take ſuch bail; or if the defendant cannot procure ſuch bail, and is thereupon committed by the ſheriff, he may nevertheleſs at the next term (and not afterwards) be allowed to traverſe the ſheriff's return of elongation, or to plead any matter of juſtification, in the ſame manner as he

Proviſo.

he might have done, to the original replevin: And if the Jury ſhall not find that he is guilty of eloigning the plaintiff, as ſet forth in the return, or if they find that the juſtification is ſupported, the defendant ſhall be allowed his coſts, againſt the plaintiff; but if the defendant will not traverſe the return, and put himſelf upon the county, or if upon traverſing the ſame, he ſhall be found guilty of the elongation of the plaintiff; or if upon pleading a juſtification, he ſhall not ſupport the ſame, then the Court ſhall order him into the cuſtody of the ſheriff, and ſhall iſſue an alias writ of withernam to hold him, until he ſhall produce the body of the plaintiff, or until he can prove that the plaintiff is dead; which fact may be tried at any term of the ſame Court, and in the ſame county, by a Jury, upon the information, and at the expenſe of the defendant.

V. *And it is further enacted*, That the original writ of withernam, ſhall be in form following, *viz.*

Commonwealth of *Maſſachuſetts.*

L.S. —— ſſ.

To the ſheriff of our county of ——,

GREETING.

Form of the original writ of withernam.

WHEREAS we have heretofore by our writ *de homine replegiando*, commanded you, that juſtly and without delay [*here the original writ*, de homine replegiando, *ſhall be recited*] and you having returned thereupon [*here the ſheriff's return ſhall be recited*] We therefore command you, that without delay, you take the body of the ſaid *G. H.* if he may be found in your precinct, and him ſafely keep, ſo that he may be at our Court of Common Pleas, next to be holden at within and for our ſaid county of on the Tueſday of next, then and there in our ſaid Court to traverſe the return aforeſaid, upon our original writ *de homine replegiando*, and that if he ſhall be found guilty of the elongation of the ſaid *C. D.* he may be held by our alias writ of withernam, until he ſhall produce the body of the ſaid *C. D.* that he may be delivered as the law directs. Witneſs *T. N.* Eſq. at the day of in the year of our Lord,

X. Y. Clerk.

And the alias writ of withernam, ſhall be in the form following, *viz.*

Commonwealth of *Maſſachuſetts.*

L.S. —— ſſ.

To the ſheriff of our county of ——,

GREETING.

Form of an alias writ.

WHEREAS we commanded you, by our original writ *de homine replegiando*, that [*here the original writ*, de homine replegiando, *ſhall be recited*] upon which writ a return was made, that, [*here the return ſhall be recited*] whereupon our writ of withernam was duly iſſued, commanding you that [*here the writ of withernam ſhall be recited*] and at our ſaid Court, the ſaid *G. H.* [*here all the conſequent proceedings ſhall be recited*] whereupon, it was conſidered and adjudged by our ſaid Court, that the body of the ſaid *G. H.* ſhould

ſhould be taken and held, until he ſhall produce the body of the ſaid *C. D.* and until he ſhall pay the ſum of taxed in coſts againſt him: We therefore command you, that you take the body of the ſaid *G. H.* into your cuſtody, and him there to hold irrepleviſably, in one of our goals in our ſaid county of until he ſhall produce the body of the ſaid *C. D.* or is diſcharged by order of law. Witneſs Eſq. at the day of in the year of our Lord,

Clerk.

Any perſon permitted to appear for the plaintiff who ſhall ſtipulate as the court ſhall direct, &c.

VI. *And be it further enacted*, That in any ſtage of the proceedings upon proceſs, purſuant to this act, any perſon ſhall be permitted to appear for the plaintiff, who will ſtipulate as the Court ſhall direct, for the payment of all coſts and damages, that may be awarded againſt the plaintiff, although he can produce no ſpecial power for the purpoſe.

[This act paſſed *February* 19, 1787.]

An Act preſcribing Forms of Writs in civil Cauſes, and directing the Mode of proceeding therein.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That in all civil actions the original proceſs in the following caſes betwixt party and party, ſhall be made out in the forms following, *that is to ſay*, [*Summons.*]

Commonwealth of *Maſſachuſetts*.

S——— ſſ.

Form of ſummons.

L. S. *To the ſheriff of our county of* S———, *or his Deputy.* GREETING.

WE command you, that you ſummon *A. B.* of *C.* [addition] (if he may be found in your precinct) to appear before our Juſtices of our Court of to be holden at *B.* within and for our ſaid county of *S.* on the Tueſday of then and there in our ſaid Court to anſwer to *D. E.* of *R.* within our county of *M.* [addition.] in a plea of to the damage of the ſaid *D. E.* (as he ſaith) the ſum of *pounds*, which ſhall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witneſs *E. H.* Eſq. at *B.* the day of in the year of our LORD,

A. D. Clerk.

[*Capias, or Attachment.*]

Commonwealth of *Maſſachuſetts*.

S———, ſſ.

Form of capias or attachment.

L. S. *To the ſheriff of our county of* S———, *or his Deputy.* GREETING.

WE command you to attach the goods or eſtate of *R. F.* of *B.* within our county of *S*——, [addition] to the value of *pounds*, and

and for want thereof to take the body of the ſaid *R. F.* (if he may be found in your precinct) and him ſafely keep, ſo that you have him before our Juſtices of our Court of , next to be holden at *B.* within and for our ſaid county of *S.* on the Tueſday of , then and there in our ſaid Court, to anſwer unto *D. S.* of *R.* within our county of *M.* (addition) in a plea of to the damage of the ſaid *D. S.* (as he ſaith) the ſum of *pounds*, which ſhall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witneſs *E. H.* Eſq. at *B.* the day of in the year of our LORD, *A. D.* Clerk.

[*Summons when Goods are attached.*]

Commonwealth of *Maſſachuſetts.*

S———, ſſ.

L. S. *To* A. B. *of* B. *within our county of* S———, [*addition*]

GREETING.

Form of ſummons when goods are attached.

WE command you, that you appear at our next Court of , to be holden at *B.* within and for our county of *S.* aforeſaid, on the Tueſday of , then and there to anſwer to *C. D.* of *R.* within our county of *M.* [addition] in a plea of which plea the ſaid *C. D.* hath commenced againſt you, to be heard and tried at the ſaid Court; and your goods or eſtate are attached to the value of *pounds*, for ſecurity to ſatisfy the judgment which the ſaid *C. D.* may recover upon the aforeſaid trial. Fail not of appearance at your peril. Witneſs *E. H.* Eſq. at *B.* the day of , in the year of our LORD,

A. D. Clerk.

[*Execution.*]

Commonwealth of *Maſſachuſetts.*

S———, ſſ.

L. S. *To the ſheriff of our county of* S———, *or his deputy.*

GREETING.

Form of execution.

WHEREAS *C. L.* of *R.* within our county of *S.* [addition] by the conſideration of our Juſtices of our Court of , holden at *B.* for and within our county of *S.* aforeſaid, on the Tueſday of recovered judgment againſt *D. T.* of *B.* in the county of *M.* [addition] for the ſum of *pounds* *ſhillings* and *pence*, debt or damage, and *pounds* *ſhillings* and *pence*, coſts of ſuit, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels or lands of the ſaid *D. T.* within your precinct, you cauſe to be paid and ſatisfied unto the ſaid *C. L.* at the value thereof in money, the aforeſaid ſum, being *pounds* *ſhillings* and *pence*, in the whole, with *ſhillings* more for this writ, and thereof alſo to ſatisfy yourſelf for your own fees. And for want of goods, chattels or lands of the ſaid *D. T.* to be by him ſhewn unto you, or found within your precinct, to the acceptance of the ſaid *C. L.* to ſatisfy the ſums aforeſaid, we command you to take the body of the ſaid *D. T.* and him commit unto

our goal in *B.* in our county of *S.* aforeſaid, and detain in your cuſtody within our ſaid goal, until he pay the full ſums above-mentioned, with your fees, or that he be diſcharged by the ſaid *C. L.* the creditor, or otherwiſe by order of law. Hereof fail not, and make return of this writ, with your doings therein. Witneſs *E. H.* Eſq. at *B.* the day of in the year of our LORD, *A. D.* Clerk.

II. *And be it enacted by the authority aforeſaid,* That the writ for putting ſuch into poſſeſſion of any land or tenements as ſhall recover judgment for the ſame, and for levying the coſt and damages recovered upon ſuch ſuit, commonly called a writ of *facias habere poſſeſſionem,* and writ of *fieri facias* ; as alſo the writ of *ſcire facias,* to be iſſued out of the Supreme Judicial Court, or Court of Common Pleas, reſpectively, ſhall be from time to time granted and iſſued in the form following, *that is to ſay,*

(Writ of Facias habere Poſſeſſionem, and Fieri Facias.)

Commonwealth of *Maſſachuſetts.*

L.S. *S*———, ſſ.

To the ſheriff of our county of S———, *or his Deputy.* GREETING.

Writ of facias habere poſſeſſionem, and fieri facias.

WHEREAS *A. B.* of *C.* (addition) before our Juſtices of our Court of holden for or within our county of *S.* aforeſaid, at *B.* upon the day of by the conſideration of our ſaid Court, recovered judgment for his title and poſſeſſion of and in a certain meſſuage or tenement with the appurtenances, or acres of land, with the appurtenances and privileges, lying and being in the town of *D.* againſt *E. F.* of *G.* (addition) who had unjuſtly withheld, put out or amoved the ſaid *A. B.* from his poſſeſſion thereof; and alſo at the ſaid Court recovered judgment for *pounds ſhillings* and *pence,* for coſts and damages, which he ſuſtained by reaſon of the ſame, as to us hath been made to appear of record. We command you therefore, that without delay, you cauſe the ſaid *A. B.* to have poſſeſſion of and in the ſaid meſſuage or tenement, with the appurtenances ; or the ſaid acres of land, with the appurtenances and privileges : We alſo command you, that of the goods, chattels or lands of the ſaid *E. F.* within your precinct, at the value thereof in money, you cauſe the ſaid *A. B.* to be paid and ſatisfied the aforeſaid ſum of *pounds ſhillings* and *pence,* which to the ſaid *A. B.* was adjudged for his coſts and damages, with *ſhillings* more for this writ, and thereof alſo to ſatisfy yourſelf for your own fees. And for want of ſuch goods, chattels or lands of the ſaid *E. F.* to be by him ſhewn unto you or found within your precinct, to the acceptance of the ſaid *A. B.* to ſatisfy the aforeſaid ſum : We command you to take the body of the ſaid *E. F.* and him commit unto our goal, in *B.* in our county of *S.* aforeſaid, and detain in your cuſtody within our ſaid goal, until he pay the full ſum above-mentioned with your fees ; or that he be diſcharged by the ſaid *A. B.* or otherwiſe by order of law. Hereof fail not, and make return of this

this writ with your doings therein. Witneſs *E. H.* Eſq. at *B.* the day of in the year of our LORD,

A. D. Clerk.

(Writ of Scire Facias.)

Commonwealth of *Maſſachuſetts.*

S———, ſſ.

L.S. *To the ſheriff of our county of* S———, *or his deputy.*

GREETING.

Form of the writ of ſcire facias.

WHEREAS *C. D.* of *B.* (addition) before our Juſtices of our Court of holden for or within our ſaid county of *S.* at *B.* on the day of in the year of our Lord, by the conſideration of our ſaid Juſtices, recovered againſt *A. B.* of *E.* (addition) the ſum of *pounds ſhillings* and *pence*, debt or damage; and alſo *pounds ſhillings* and *pence*, for coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *A. B.* is convict, as to us appears of record; and although judgment be thereof rendered, yet the execution of the ſaid debt or damage and coſts doth yet remain to be made, whereof the ſaid *C. D.* hath made application to us to provide remedy for him in that behalf: Now to the end that juſtice be done, we command you, that you make known unto the ſaid *A. B.* that he be before our Juſtices of our ſaid Court of to be holden within or for our ſaid county of *S.* at *B.* on the day of to ſhew cauſe (if any he hath) wherefore the ſaid *C. D.* ought not to have his execution againſt him the ſaid *A. B.* for his debt or damage and coſts aforeſaid; and further to do and receive that which our ſaid Court ſhall then conſider; and there and then have you this writ, with your doings therein. Herein fail not. Witneſs *E. H.* Eſq. at *B.* the day of in the year of our LORD,

A. D. Clerk.

III. *And be it enacted*, That the ſeveral forms of writs and proceſſes hereunder written, ſhall be, and hereby are eſtabliſhed to be the forms to be granted and uſed in civil cauſes triable before a Juſtice of the Peace, *that is to ſay*,

(Summons for Appearance.)

S———, ſſ.

L.S. *To the ſheriff of the ſaid county of* S———, *or either of his deputies, or the conſtables of the town of B. within the ſaid county, or to any or either of them.*

GREETING.

Form of ſummons for appearance.

IN the name of the Commonwealth of *Maſſachuſetts*, you are required to ſummon and give notice unto *T. P.* of *B.* aforeſaid [addition] (if he may be found in your precinct) that he appear before me, *J. D.* Eſq. one of the Juſtices of the Peace for the county aforeſaid, at my dwelling-houſe, in *B.* on the day of at of the clock in the noon; then and there to anſwer to *E. L.* of *M.* [addition] in a plea of to the damage of the ſaid *E. L.* (as he ſaith) the ſum of as ſhall then and there

there appear with other due damages. And of this writ, with your doings therein, you are to make true return unto myſelf, at or before the ſaid day of . Dated at *B.* aforeſaid, the day of in the year of our LORD,

J. D.

[*Capias, or Attachment.*]

L. S. *S*———, ſſ.

To the ſheriff of the ſaid county of S———, *or either of his deputies, or the conſtables of the town of B. within the ſaid county, or to any or either of them.*

GREETING.

Form of capias, or attachment.

IN the name of the Commonwealth of *Maſſachuſetts*, you are required to attach the goods or eſtate of *T. P.* of *B.* aforeſaid [addition] to the value of and for want thereof, to take the body of the ſaid *T. P.* (if he may be found in your precinct) and him ſafely keep, ſo that he may be had before me, *J. D.* Eſq. one of the Juſtices of the Peace for the county aforeſaid, at my dwelling-houſe, in *B.* on the day of at of the clock in the noon; then and there to anſwer to *E. L.* of *M.* [addition] in a plea of to the damage of the ſaid *E. L.* (as he ſaith) the ſum of as ſhall then and there appear, with other due damages. Hereof fail not, and make due return of this writ, and of your doings therein, unto myſelf, at or before the ſaid day of . Dated at *B.* aforeſaid, the day of in the year of our LORD,

J. D.

[*Summons when Goods are attached.*]

L.S. *S*———, ſſ.

To T. P. *of* D. *in the county of S*———, [addition]

GREETING.

Form of ſummons when goods are attached.

IN the name of the Commonwealth of *Maſſachuſetts*, you are commanded to appear before me, *J. D.* Eſq. one of the Juſtices of the Peace for the county aforeſaid, at my dwelling-houſe, in *B.* on the day of at of the clock in the noon, to anſwer unto *E. L.* of *M.* [addition] in a plea of which plea the ſaid *E. L.* hath commenced to be heard and tried before me; and your goods or eſtate are attached to the value of for ſecurity to ſatisfy the judgment which the ſaid *E. L.* may recover upon the aforeſaid trial. Fail not of appearance at your peril. Dated at *B.* aforeſaid, the day of in the year of our LORD,

J. D.

[*Form of Execution.*]

Commonwealth of *Maſſachuſetts*.

L. S. *S*———, ſſ.

Form of execution.

To the ſheriff of our ſaid county of S———, *or either of his deputies, or the conſtables of the town of* B. *within our ſaid county, or any or either of them.* GREETING.

WHEREAS *E. L.* of *M.* [addition] on the day of before *J. D.* Eſq. one of our Juſtices of the Peace for our county aforeſaid,

aforeſaid, recovered judgment againſt *T. P.* of *B.* [addition] for the ſum of debt or damage, and *ſhillings* and *pence* for charges of ſuit, as to us appears of record, whereof execution remains to the done: We command you therefore, that of the money of the ſaid *T. P.* or of his goods or chattels within your precinct, at the value thereof in money, you cauſe to be levied, paid and ſatisfied unto the ſaid *E. L.* the aforeſaid ſums, being *pounds* *ſhillings* and *pence*, in the whole; and alſo that out of the money, goods or chattels of the ſaid *T. P.* you levy more for this writ, together with your own fees. And for want of ſuch money, goods or chattels of the ſaid *T. P.* to be by him ſhewn unto you, or found within your precinct, to the acceptance of the ſaid *E. L.* for ſatisfying the aforeſaid ſums: We command you to take the body of the ſaid *T. P.* and him commit unto our goal in *B.* and we command the keeper thereof accordingly, to receive the ſaid *T. P.* into our ſaid goal, and him ſafely to keep until he pay the full ſums above-mentioned, with your fees, or that he be diſcharged by the ſaid *E L.* the creditor, or otherwiſe by order of law. Hereof fail not, and make return of this writ, with your doings therein, unto our ſaid Juſtice, within ſixty days next coming. Witneſs our ſaid Juſtice, at *B.* the day of in the year of our LORD, *J. D.*

IV. *And be it further enacted*, That the form of the writ of *ſcire facias* aforeſaid, ſhall be the form of a writ of *ſcire facias* upon a judgment recovered before a Juſtice of the Peace, *mutatis mutandis*.

V. *And be it further enacted by the authority aforeſaid*, That the Clerk of each town reſpectively, within this Commonwealth, as well as the Clerks of the ſeveral Courts aforeſaid, may, and are hereby reſpectively empowered to grant ſummons for witneſs in civil cauſes, directed to the perſon to be ſummoned for witneſs; which ſummons ſhall be made out in the form following, *that is to ſay*:

[*Subpæna for witneſſes.*]

S——, ff.

To A. B. *of* C. [*addition*] GREETING.

Subpæna for witneſſes.

YOU are hereby required, in the name of the Commonwealth of *Maſſachuſetts*, to make your appearance before the Juſtices of the next to be holden at *B.* within and for the county of *S.* on the Tueſday of to give evidence of what you know relating to an action or plea of then and there to be heard and tried betwixt *A. B.* of *C.* (addition) plaintiff, and *D. E.* of *E.* (addition) defendant. Hereof fail not, as you will anſwer your default under the pains and penalty in the law in that behalf made and provided. Dated at *B.* the day of in the year of our LORD,

A. D. Clerk.

Juſtices empowered to grant ſummons for witneſſes.

VI. *And be it further enacted*, That every Juſtice of the Peace may, and hereby is empowered to grant ſummons for witneſſes in civil cauſes triable before himſelf, ſuch ſummons to be directed as, and ſimilar to, the ſummons for witneſſes in civil cauſes as aforeſaid,

ſaid, *mutatus mutandis*. And if any perſon or perſons who ſhall be ſerved with lawful proceſs or ſummons to teſtify, depoſe, or give evidence concerning any cauſe or matter depending in any of the Courts aforeſaid, or before any Juſtice of the Peace as aforeſaid, and having tendered unto him or them ſuch reaſonable ſum or ſums of money for his or their coſts and charges, as, having regard to the diſtance of the places, is neceſſary to be allowed in that behalf, do not appear according to the tenor of the proceſs or ſummons, having no reaſonable let or impediment to the contrary, then the perſon ſo making default ſhall be liable to the action of the aggrieved party for all damages by him ſuſtained by ſuch default, and the Court or Juſtice of the Peace ſhall have power by attachment to bring ſuch contemptuous witneſs into Court, or before him, and to fine him at diſcretion, not exceeding the ſum of *ſix pounds*, and ſhall order him to pay the coſt of ſuch attachment.

Perſons making default, liable to the action of the aggrieved party.

VII. *And it is further enacted*, That when any defendant ſhall be duly ſerved with proceſs, and return thereof ſhall be made into the Court where the ſame is returnable, and he ſhall not appear by himſelf, or his attorney, his default ſhall be recorded, and the charge in the declaration ſhall be taken and deemed to be true, and the Court ſhall thereupon give ſuch damages as they ſhall find upon enquiry that the plaintiff ſhall have ſuſtained, unleſs the plaintiff ſhall move to have a jury to enquire into the damages, in which caſe the Court ſhall enter up judgment for ſuch damages as the jury ſhall aſſeſs. *Provided nevertheleſs*, That if the defendant ſhall come into Court at any time before the jury is diſmiſſed, and ſhall pay down to the adverſe party the coſts he has been at thus far, or ſo much thereof as the Court ſhall judge reaſonable, then the Court may admit the defendant to have the ſame day in Court as if his default had never been recorded.

Defendants ſerved with proceſs, and not appearing, their default to be recorded.

Proviſo.

VIII. *And it is alſo enacted*, That when any perſon in whoſe favour a judgment is given at the Court of Common Pleas ſhall appeal therefrom, becauſe the damages given are too ſmall, he ſhall be entitled to a jury at the Supreme Judicial Court, to enquire into the damages without any further notice to the appellee. And when in the Common Pleas, judgment ſhall be given either upon abatement or demurrer, the party againſt whom judgment is given, ſhall have the privilege of appealing without any further proceedings had in the Common Pleas. And all agreements for waving pleas, and for amendments, and for making new pleas at the Supreme Judicial Court, made and entered upon the records of the Common Pleas, ſhall be binding to the parties throughout the whole proceſs of the ſuit.

When judgment is given, perſons appealing to be entitled to a jury at the Supreme Judicial Court.

IX. *And it is alſo enacted*, That when any plaintiff ſhall in any ſtage of his action become non-ſuit, or diſcontinue his ſuit, the defendant ſhall recover his coſt againſt him, and that in all actions as well thoſe of *qui tam* as others, the party prevailing ſhall be entitled to his legal coſts againſt the other.

When plaintiffs become non-ſuit, the defendants to recover coſts againſt them.

X. *And it is further enacted*, That no perſon impriſoned upon mean proceſs ſhall be held in priſon upon ſuch proceſs above the ſpace

of

of thirty days next after the entering up final judgment upon the writ whereby he is committed; unleſs he ſhall be continued there by having his body taken in execution, nor ſhall the priſon keeper diſcharge any ſuch priſoner, unleſs judgment is given in his favour, until thirty days next after the ſaid judgment is entered up, unleſs the party at whoſe ſuit he was committed, ſhall give order, in writing, for his diſcharge, and ſhall pay the legal fees of the goaler.

No perſons impriſoned upon mean proceſs to be held in goal above 30 days, unleſs.

XI. *And it is further enacted*, That all original writs iſſuing out of the Supreme Judicial Court, or Court of Common Pleas, ſhall before they are ſerved, be indorſed on the back thereof by the plaintiff or plaintiffs, or one of them, with his chriſtian or ſurname, if he or they are inhabitants of this Commonwealth, or by his or their agent or attorney, being an inhabitant thereof, and where the plaintiff, is not an inhabitant of this Commonwealth, then his writ ſhall be indorſed in manner aforeſaid, by ſome reſponſible perſon who is an inhabitant of this Commonwealth, provided that the Court may upon motion, in conſideration that the agent or attorney who indorſed the writ is not of ability for the purpoſe hereafter mentioned, order that the plaintiff ſhall procure a new indorſer, and ſuch new indorſer ſhall be held in the ſame manner as if the indorſement had been made before the writ was ſerved, and unleſs the plaintiff ſhall procure ſuch new indorſer when directed thereunto by the Court, he ſhall become non-ſuit, but no coſts ſhall be awarded againſt him. And the plaintiff's agent or attorney who ſhall ſo indorſe his name upon an original writ, ſhall be liable in caſe of the avoidance or inability of the plaintiff to pay the defendant all ſuch coſts as he ſhall recover, and to pay all priſon charges that may happen, where the plaintiff ſhall not ſupport his action. And all goods and eſtate attached upon mean proceſs for the ſecurity of the debt and damages ſued for, ſhall be held for the ſpace of thirty days after final judgment to be taken in execution. And if the creditor ſhall not take them in execution within thirty days after judgment, the attachment ſhall be void.

How original writs iſſued are to be indorſed.

XII. *And be it further enacted*, That when an action ſhall be brought to recover a debt due on book accounts, an account ſtated by the parties, *a quantum meruit*, *quantum valebat*, or for ſervices done upon an agreed price, the defendant may file any account he hath, in the Clerk's office ſeven days before the ſitting of the Court of Common Pleas where the action is brought, or if the ſuit is before a Juſtice of the Peace, the account ſhall be filed before the Juſtice, four days before the day of trial, and upon the general iſſue give the ſame in evidence againſt the plaintiff's demand. And if upon the trial it ſhall appear that there is a balance due to the defendant, he ſhall recover the ſame in the ſame manner as if he had brought his action therefor, and where a plaintiff ſhall at the ſame Court bring divers actions upon demands which might have been joined in one, he ſhall recover no more coſts than in one action only.

When actions are brought to recover debts, the defendants may file their accounts.

XIII. *And be it alſo enacted*, That when the plaintiff and defendant both live within the Commonwealth, all perſonal or tranſitory actions

Perſonal or tranſitory actions to be brought in the county where one of the parties lives.

tions ſhall be brought in the county where one of the parties lives. And when an action ſhall be commenced in any other county, than as above directed, the writ ſhall be abated and the defendant allowed double coſts.

No ſummons, writs, &c. in the Courts to be abated, &c. for any errors.

XIV. *And be it further enacted by the authority aforeſaid,* That no ſummons, writ, declaration, proceſs, judgment, or other proceedings in the Courts or courſe of Juſtice, ſhall be abated, arreſted, quaſhed, or reverſed for any kind of circumſtantial errours or miſtakes when the perſon and caſe may be rightly underſtood by the Court, nor through defect or want of form only, and the Court on motion made may order amendments.

Executions not to iſſue until.

XV. *And be it further enacted,* That execution ſhall not iſſue in any caſe, until the expiration of twenty-four hours after the entering up of judgment.

[This act paſſed *October* 30, 1784.]

An Act for providing and regulating of Priſons.

Goals to be erected in towns where Courts are holden.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That the Juſtices of the Court of General Seſſions of the Peace ſhall from time to time, aſſeſs the polls and eſtates within their ſeveral counties, in ſuch ſums as may be neceſſary to erect and keep in repair, a good and ſufficient goal in each town where a Court by law is to be holden; and to direct and order the building and repairing ſuch goals, according to their diſcretion.

Eſcape of priſoners through the inſufficiency of goals or negligence of ſheriffs, &c. to whom chargeable.

Provided nevertheleſs, That the Courts of Seſſions ſhall not aſſeſs any greater ſum of money to defray county charges, than they ſhall be authorized by the General Court to aſſeſs; and where the eſcape of any priſoner ſhall happen through the inſufficiency of the goal, or the negligence of the ſheriff or goaler, the ſheriff of the county in which the eſcape happens, ſhall ſtand chargeable to the plaintiff, creditor or other perſon, at whoſe ſuit or for whoſe debt he was committed, or to whoſe uſe any forfeiture was adjudged againſt ſuch priſoner; and in caſe the eſcape ſhall happen through the inſufficiency of the goal, the Court of General Seſſions of the Peace in the county, ſhall have power and authority to aſſeſs the ſum or ſums upon the polls and eſtates of the county, and to order the county Treaſurer to pay the ſame over to the ſheriff of the county; and if the Court of General Seſſions of the Peace ſhall not make ſuch aſſeſſments, and if the Treaſurer ſhall not pay ſuch ſum or ſums within ſix months next after the demand ſhall be laid before the Court of Seſſions, then the ſheriff of the county may bring his action againſt the inhabitants of ſuch county, to be heard and tried, either in that or one of the next adjoining counties, at his election; and an atteſted copy of the writ being left thirty days before the ſitting of the Court, with the county Treaſurer, by the Coroner of the ſame county, ſhall be held and adjudged to be ſufficient notice

In caſe the eſcape happens through the inſufficiency of goals, Court of Seſſions empowered, &c.

of

of the ſuit; and the Juſtices of the Court of General Seſſions of the Peace, ſhall have full power to appoint an agent or agents to appear and defend againſt ſuch action; and when it ſhall ſo happen that the ſuit ſhall be commenced in another county, and no Court of Seſſions ſhall be holden within the county ſued, between the time of the ſervice of the writ, and the ſitting of the Court before which the action is brought, the cauſe ſhall be continued one term; and all advantages ſhall be ſaved to the defendants as though they had appeared at the firſt term; and if judgment ſhall be given againſt the county, the debt may be levied by execution upon the goods, chattels or lands of any inhabitant or inhabitants of the county, who ſhall thereupon have his or their action jointly or ſeverally in like manner againſt the county, to recover the monies ſo levied of him or them.

Penalty for conveying any inſtrument or tool into priſon.

II. *And be it further enacted*, That if any perſon ſhall directly or indirectly, by any ways or means howſoever, without the knowledge or privity of the keeper, convey any inſtrument, tool, or other thing whatſoever, to any priſoner, or into any priſon, whereby any priſoner might break the priſon, or work himſelf unlawfully out of the ſame, every perſon ſo offending, ſhall forfeit and pay ſuch fine as by the diſcretion of the Court ſhall be impoſed, not exceeding *one hundred pounds*, according to the nature of the cauſe of the priſoner's commitment, or ſuffer ſuch corporal puniſhment, not exceeding forty ſtripes, as the Court ſhall inflict; and if it ſhall ſo happen, that any priſoner ſhall make his eſcape by means of any inſtrument, tool or other thing ſo conveyed, without the knowledge and privity of the keeper, the perſon ſo conveying the ſame, ſhall be liable to pay all ſuch ſums of money as the priſoner ſtood committed for, and ſhall have inflicted upon him all ſuch puniſhment as the eſcaped priſoner would be liable unto, if he had been convicted of the charge for which he ſtood committed, unleſs ſuch priſoner would have been liable to capital puniſhment, in which caſe, the perſon aſſiſting in ſuch eſcape, ſhall be puniſhed by fine, impriſonment, whipping, pillory, or ſitting on the gallows with a rope about his neck, or any one or more of the ſaid puniſhments, as the Court ſhall think proper to inflict.

Further Penalty in caſe any priſoner by means of ſuch inſtrument, &c, ſhall eſcape.

Penalty on the goaler for a voluntary eſcape.

III. *And be it further enacted*, That every goaler or priſon-keeper that ſhall voluntarily ſuffer any priſoner committed unto him to eſcape, ſhall ſuffer and undergo the like pains, puniſhment and penalties, as the priſoner ſo eſcaping ſhould by law, for the crime or crimes wherewith he ſtood charged, if he had been convicted thereof; and if any goaler or priſon-keeper ſhall, through negligence, ſuffer any priſoner accuſed of any crime to eſcape, he ſhall pay ſuch fine as the Juſtices of the Court before whom he is convicted, ſhall in their diſcretion inflict, according to the nature of the offence for which the eſcaped priſoner ſtood committed.

For a negligent eſcape.

Proviſo.

Provided nevertheleſs, That if any perſon who ſtands committed for debt ſhall eſcape from priſon, and the ſheriff, the goaler or priſon-keeper, ſhall within three months next after ſuch eſcape, recover the priſoner ſo eſcaped, and return him back to the priſon again, then the ſheriff ſhall be liable to nothing further than the coſt of

Fines how applied.

any action that may have been commenced againſt him for ſuch eſcape; and all fines ariſing upon the breach of this act, ſhall be applied to the uſe of building and repairing the goal or goals in the county where the offence is committed, and ſhall be paid to the Treaſurer of the county for that purpoſe.

Sheriffs to keep a true regiſter of all priſoners.

IV. *And be it further enacted by the authority aforeſaid,* That the ſheriffs of the reſpective counties, from and after the paſſing this act, ſhall keep a true and exact kalendar or regiſter of all priſoners committed to any priſon under his care, and that the ſame ſhall be kept in a large bound book provided and kept for that only purpoſe; and in the ſame book ſhall be diſtinctly and fairly regiſtered, the names of all priſoners who ſhall from time to time be committed to priſon (beginning with the names of thoſe who may be priſoners when this law ſhall take place) with their names, places of abode, additions, the time of their commitment, for what cauſe, and by what authority committed; and of ſuch as are committed for criminal offences, a deſcription of their perſons; and alſo from time to time, as any priſoner ſhall be liberated, the ſheriff ſhall alſo regiſter in the ſame book, the name and deſcription of the perſons as aforeſaid, the time when, and the authority by which ſuch liberation took place, and if any priſoner eſcapes, the time and manner of the eſcape ſhall be noted in the ſaid book.

Goalers to return a liſt of their priſoners.

V. *And it is further enacted,* That every goaler or priſon-keeper, at the opening of the Supreme Judicial Court, or the Court of General Seſſions of the Peace within the county where he keeps the goal, ſhall return a liſt of the priſoners in his cuſtody, therein certifying the cauſe for which, and the perſons by whom they were committed, and the names of all perſons who ſhall be committed during the ſitting of either of the ſaid Courts, with the cauſe of their commitment, that the Juſtices of the ſame Courts reſpectively may take cognizance thereof, and as well for the Commonwealth as the parties, may proceed to make deliverance of ſuch priſoners according to law, for the crimes proper to the juriſdiction of the ſame Courts reſpectively; and alſo ſhall have the ſaid kalendar or regiſter of priſoners ready to be inſpected by the ſaid Courts; and if any goaler ſhall make default herein, he ſhall be fined at the diſcretion of the Court.

Warrants, mittimus's, &c. to be filed in their order.

VI. *And be it enacted by the authority aforeſaid,* That all warrants, mittimus's, writs and inſtruments of any kind, or the atteſted copies of them, by which any priſoner ſhall be committed, enlarged or liberated, ſhall be ſafely kept regularly filed in their order of time, and together with the ſaid kalendar or regiſter, ſhall be ſafely kept in a ſuitable box for that purpoſe, and upon the death or removal of any ſheriff, ſhall be delivered to his ſucceſſor in the office, on the penalty of *fifty pounds*, to be paid by the ſheriff removed, or his executors or adminiſtrators, in caſe of the death of the ſheriff, to be recovered by any perſon who ſhall proſecute therefor, in any Court proper to try the ſame.

Upon removal or death of any Sheriff, to be delivered to his ſucceſſor.

VII. *And it is further enacted,* That in the priſons within the ſeveral counties of this State, there ſhall be provided by the Juſtices of the Court of General Seſſions of the Peace, and at the expence

pence of each county reſpectively, ſufficient and convenient apartments for receiving and lodging priſoners for debt, ſeparate and diſtinct from felons and other criminals; and it ſhall be the duty of the ſaid Juſtices at the beginning of every quarter ſeſſions, to enquire into the ſtate of the priſons in their reſpective counties, with reſpect to the ſecurity of ſuch priſons from eſcape, the condition and accommodation of the priſoners, and ſhall from time to time take ſuch meaſures as may beſt tend to ſecure them from eſcape, ſickneſs and infection.

Apartments to be provided for debtors, ſeperate from criminals.

Juſtices to enquire into the ſtate of priſons.

VIII. *And be it further enacted*, That any perſon impriſoned for debt, either upon mean proceſs or execution, ſhall be permitted and allowed to have a chamber and lodging in any of the houſes or apartments belonging to ſuch priſons, and liberty of the yard within the ſame in the day time, but not to paſs without the limits of the priſon, upon reaſonable payment to be made for chamber room, to be ſet and eſtabliſhed once in every year by the Court of Seſſions, and not to exceed *two ſhillings* a week. *Provided*, That ſuch priſoner ſhall give bond with ſufficient ſurety or ſureties, within the county, to the creditor or creditors, in double the ſum for which he is impriſoned, conditioned that from the time of executing ſuch bond, he will continue a true priſoner in the cuſtody of the goaler, and within the limits of the ſaid priſon, until he ſhall be lawfully diſcharged, without committing any manner of eſcape; and in order to prevent any oppreſſion under pretence of the ſurety or ſureties being inſufficient, two diſintereſted Juſtices of the Peace, *quorum unus*, ſhall be called to approve of the ſurety or ſureties, and the ſame being approved by them, ſhall be deemed ſufficient; and if the creditor or creditors ſhall refuſe to take the bond, the ſame ſhall be left with the ſheriff until the creditor or creditors ſhall demand the ſame; and upon putting ſuch bond in ſuit when the condition ſhall be broken, judgment ſhall be entered up for the whole of the penalty, and no chancery ſhall be allowed therein; and the Court of General Seſſions of the Peace ſhall fix and determine the boundaries of the goal yards to the ſeveral goals appertaining in their reſpective counties, as ſoon as may be after the publication of this act.

Debtors to have liberty of the goal yard, &c.

Proviſo.

Whereas it may at ſome times happen, that the goaler or priſonkeeper may demand an unreaſonable compenſation for articles provided for a priſoner, while in priſon, under his cuſtody:

IX. *Therefore be it further enacted by the authority aforeſaid*, That whenever any diſpute about the price of ſuch articles ſhall ariſe, the Court of General Seſſions of the Peace for the county in which ſuch goal ſtands, ſhall be, and hereby are fully authorized to hear and finally to determine all ſuch diſputes.

Diſputes ariſing by unreaſonable demands of goalers, how determined.

[This act paſſed *February* 21, 1785.]

An Act for the Relief of Poor Priſoners, who are committed by Execution for Debt.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when any perſon, ſtanding committed by force of any execution iſſuing from any Court in this Commonwealth, on a judgment recovered by any perſon, ſhall complain that he, or ſhe, hath not eſtate ſufficient to ſupport him, or her, in priſon, the goaler or keeper of ſuch priſon, ſhall on ſuch complaint, apply to one of the Juſtices of the Peace, within and for the county, in which ſuch priſon is, who ſhall thereupon make out a notification in writing under his hand and ſeal, thereby ſignifying to the creditor or creditors, ſuch priſoner's deſire of taking the privilege and benefit allowed in and by this act, and of the time and place, appointed for the intended caption of the oath or affirmation allowed by this act, and which being ſerved on the creditor, or creditors, of the ſaid priſoner, if he, ſhe or they live within this Commonwealth, his or her executor, or adminiſtrator; and if ſuch creditor or creditors, live out of this Commonwealth, upon his or their agent, or attorney, who brought forward the ſuit on which the judgment whereon the execution by which the priſoner ſtands committed, was rendered, by the ſheriff, or his deputy, of the county, in which the ſaid ſervice ſhall be made, either by reading the ſame to him or her, or by leaving an atteſted copy thereof, at the uſual place of abode of ſuch creditor or creditors, agent or attorney as aforeſaid, at leaſt thirty days before the time appointed for taking the ſaid oath or affirmation, that he, ſhe, or they may be preſent, if they ſee cauſe. *Provided,* That if any creditor or creditors, live out of this Commonwealth, and have no agent or attorney as aforeſaid living in the ſame, an atteſted copy of ſuch notification, ſhall be left with the Clerk of the Court, or the Juſtice by whom the ſaid execution was ſigned, at leaſt fifty days before ſuch intended caption.

Clauſe reſpecting peaſons who ſtand committed, & have not ſufficient eſtate to ſupport themſelves in priſon.

II. *And be it further enacted,* That any two Juſtices of the Peace, within and for the county where ſuch caption is to be taken, each of whom ſhall be of the quorum, and diſintereſted and not related either to the creditor or debtor, are hereby authorized and empowered, at the time and place appointed for the taking ſuch caption, to examine the return of the ſaid notification; and if it ſhall appear to be duly made, to adminiſter the ſaid oath or affirmation, after fully examining and hearing the parties, if they the ſaid Juſtices, ſhall think proper ſo to do, to ſuch debtor; which oath or affirmation, ſhall be in the form following, *to wit.*

Juſtices of the Peace empowered to adminiſter an oath or affirmation.

I do ſolemnly ſwear before Almighty God, (or affirm, as the caſe may be) that I have not any eſtate, real or perſonal, in poſſeſſion, reverſion or remainder, ſufficient to ſupport myſelf in priſon, or to pay priſon charges; and that I have not ſince the commencement of this ſuit againſt me, or at any other time, directly or indirectly, ſold, leaſed or otherwiſe conveyed or diſpoſed of, to, or intruſted any perſon or perſons whomſoever, with all

Form of the oath.

all or any part the eſtate, real or perſonal, whereof I have been the lawful owner or poſſeſſor, with any intent or deſign to ſecure the ſame, or to receive or to expect any profit or advantage therefor; or have cauſed or ſuffered to be done, any thing elſe whatſoever, whereby any of my creditors my be defrauded.——*So help me GOD*—(or this I do under the pains and penalties of perjury, as the caſe may be.)

Which oath or affirmation being adminiſtered by the ſaid Juſtices to, and taken by ſuch priſoner, and a certificate thereof made under the hands and ſeals of the Juſtices adminiſtering the ſame, to ſuch goaler or priſon-keeper, he ſhall thereupon ſet ſuch priſoner at liberty, if he or ſhe is committed for no other cauſe, and the body of ſuch priſoner ſhall not be held in priſon any longer upon ſuch execution; which certificate to be made by the Juſtices as aforeſaid, ſhall be in the form following, *to wit*. Certificate of ſuch oath to be made.

S——, ſſ.

To *keeper of the goal at*

WE the ſubſcribers, two of the Juſtices of the Peace for the ſaid county of *S.* and each of us of the quorum, hereby certify, that *A. B.* a poor priſoner, confined upon execution for debt, in the goal at *C.* aforeſaid, hath cauſed *D. E.* the creditor, at whoſe ſuit he was ſo confined, to be notified according to law, of his the ſaid *A. B*'s deſire of taking the benefit of an act, entitled, "An act for the relief of poor priſoners, who are committed by execution for debt;" that in our opinion the ſaid *A. B.* hath not any eſtate, either real or perſonal, ſufficient to ſupport himſelf in priſon, and that he hath not conveyed or concealed his eſtate with deſign to ſecure the ſame to his own uſe, or to defraud his creditors, and that we have after due caution to the ſaid *A. B.* adminiſtered to him the oath (or affirmation) preſcribed in the act aforeſaid. Witneſs our hands and ſeals, this day of *Anno. Domini*, Form of the certificate.

III. *And be it further enacted by the authority aforeſaid*, That if any ſuch priſoner as aforeſaid, ſhall be convicted of having ſold, leaſed or otherwiſe conveyed, concealed or diſpoſed of, or intruſted his or her eſtate, or any part thereof, directly or indirectly, contrary to his or her foregoing oath, or affirmation, he or ſhe ſhall not only be liable to the pains and penalties of wilful perjury, but ſhall receive no benefit from the ſaid oath or affirmation, and in caſe ſuch priſoner at the time of the intended caption, ſhall not take the ſaid oath or affirmation, or be not admitted thereto by the ſaid Juſtices, he ſhall be remanded back to priſon, and ſhall not be entitled to the benefit of this act, unleſs a new notification be made out, and ſerved in manner as aforeſaid. Penalty if convicted of perjury.

IV. *And be it further enacted*, That all and every judgment, obtained againſt ſuch priſoners, ſhall notwithſtanding ſuch diſcharge as aforeſaid, be, and remain good and effectual in law, to all intents and purpoſes, againſt any eſtate whatſoever, which may then or at any time afterwards, belong to him or her; and the creditor Judgments obtained againſt ſuch priſoners, ſhall remain good and effectual.

or creditors, agent or attorney, their executors or adminiſtrator may take out a new execution againſt the lands, tenements, hereditaments, goods, and chattels of ſuch priſoner, (his wearing apparel, and houſhold furniture, neceſſary for himſelf, his wife and children, and tools neceſſary for his trade or occupation, only excepted) for the ſatisfaction of the debt, in ſuch ſort and manner as might have been done, in caſe the ſaid priſoner had never been taken in execution.

Perſons now in execution, who have been admitted to the oath preſcribed in a former act, ſhall be diſcharged from priſon.

V. *And be it further enacted*, That all and every perſon or perſons, now in execution, and confined in any of the goals in this Commonwealth, who have been duly admitted to the oath preſcribed in an act made and paſſed in the year of our Lord, one thouſand ſeven hundred and ſixty-three, entitled, "An act for the relief of poor priſoners for debt," and who are notwithſtanding ſtill held in cuſtody on the ſaid execution, by his, her, or their creditor, paying ſuch weekly allowance for their ſupport in priſon, as in the ſame act is provided, ſhall be, and they hereby are diſcharged from ſuch executions, whereon ſuch oath hath been adminiſtered; and the ſeveral goalers in whoſe cuſtody ſuch perſons may be, ſhall upon due notice given them of this act, diſcharge them, if they are confined for no other cauſe.

[This act paſſed *November* 19, 1787.]

An Act for appointing the Times and Places for holding the Supreme Judicial Court.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That from and after the firſt day of *January*, one thouſand ſeven hundred and eighty-three, and until the General Court ſhall otherways order and direct, the time and places for holding the Supreme Judicial Court, ſhall be as follows, *viz.*

Times and places for holding Supreme Judicial Courts.

At *Boſton*, within and for the county of *Suffolk*, on the third Tueſday of *February*, and the laſt Tueſday of *Auguſt*.

For the county of *Eſſex*, at *Ipſwich*, on the third Tueſday in *June*; at *Salem*, on the firſt Tueſday of *November*.

For the county of *Middleſex*, at *Cambridge*, on the laſt Tueſday of *October*; and at *Concord*, on the ſecond Tueſday of *April*.

For the county of *Hampſhire*, at *Northampton*, on the laſt Tueſday of *April*; and at *Springfield*, on the fourth Tueſday of *September*.

For the county of *Plymouth*, at *Plymouth*, on the third Tueſday of *May*.

For the counties of *Barnſtable* and *Dukes-County*, at *Barnſtable*, in the county of *Barnſtable*, on the Wedneſday next preceding the third Tueſday of *May*.

For the county of *Briſtol*, at *Taunton*, on the Tueſday preceding the laſt Tueſday of *October*.

For

For the county of *York*, at *York*, on the fourth Tueſday of *June*.

For the county of *Worceſter*, at *Worceſter*, on the Tueſday next preceding the laſt Tueſday of *April*, and on the third Tueſday of *September*.

For the counties of *Cumberland* and *Lincoln*, at *Falmouth*, in the county of *Cumberland*, on the Tueſday next following the fourth Tueſday of *June*.

For the county of *Berkſhire*, at *Great-Barrington*, on the firſt Tueſday in *October* next, and no longer; and after the firſt day of *January*, one thouſand ſeven hundred and eighty-four, at *Lenox*, on the firſt Tueſday in *October*.

All appeals to be heard at the Supreme Judicial Court at Boſton.

II. *And be it further enacted*, That all appeals from the Court of General Seſſions of the Peace, and from the Court of Common Pleas of the county of *Nantucket*; and all judgments, orders and determinations of ſaid Courts, for the county of *Nantucket*, that may be removed by certiorari, writ of error or otherways, into the Supreme Judicial Court, ſhall be heard and determined at the Supreme Judicial Court at *Boſton*, on the laſt Tueſday of *Auguſt*.

Writs, &c. returnable.

III. *And be it further enacted by the authority aforeſaid*, That all writs, recognizances, warrants and complaints, and every other thing that ſhould, or may be returned to, or entered at the Court aforeſaid, to be holden at the times and places heretofore appointed: And all parties and perſons that by law are, or may be required or directed to appear or attend at the aforeſaid times and places; and all actions, ſuits and matters that now are, or may be pending in the ſame Court, ſhall be returned to, entered, appear and attend, have day, be tried and determined in the ſaid Court, at the reſpective times and places eſtabliſhed by this act.

Proviſo.

IV. *Provided nevertheleſs, and be it enacted*, That the time for the next holding the Supreme Judicial Court, in the county of *Worceſter*, ſhall be on the third Tueſday of *April* next; any thing in this act to the contrary notwithſtanding.

[This act paſſed *March* 14, 1783.]

An Act for the holding a Supreme Judicial Court in the County of Lincoln.

Preamble.

WHEREAS it is found expedient and neceſſary, that there ſhould be held a Supreme Judicial Court, within and for the county of Lincoln: *Therefore*,

Courts to be annually held at Pownalboro'.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That there ſhall be annually held at *Pownalborough*, within and for the county of *Lincoln*, a Supreme Judicial Court, upon the ſecond Tueſday next following the fourth Tueſday in *June*.

Appeals, proceſſes, &c. now pending at Falmouth, ſhall be returned and proceeded upon by the Court at Pownalboro'.

II. *Be it further enacted by the authority aforeſaid*, That all appeals, recognizances and proceſſes whatever, already granted, taken, pending or iſſued, or that may within the ſpace of three months from the paſſing of this act, be granted, taken, pending or iſſued, before

before or by the Court of Common Pleas, Court of General Seſſions of the Peace, or any Juſtice or Juſtices of the Peace for the ſaid county of *Lincoln*, which are to be returned, entered or proceeded upon at the Supreme Judicial Court to be held at *Falmouth*, in the county of *Cumberland*, for the counties of *Cumberland* and *Lincoln*, ſhall be returned to, and entered, and proceeded upon by the ſaid Supreme Judicial Court, to be held at *Pownalborough* aforeſaid, according to law, and the rules of the ſame Court.

Writs, precepts, &c. ſhall be transferred to the Court at Pownalboro'.

III. *Be it further enacted by the authority aforeſaid*, That all writs, precepts and proceſſes, which have been granted or iſſued and returned, or are returnable to the ſaid Court holden at *Falmouth*; and all indictments and preſentments found, and recognizances taken at and by the ſame Court, and pending therein, which, if this act had been paſſed and in full force, at the time of granting, iſſuing, finding or taking ſuch writs, precepts, proceſſes, indictments, preſentments and recognizances, ſhould have been returned or made returnable to the Supreme Judicial Court for the ſaid county of *Lincoln*; and all writs, precepts and proceſſes that hereafter may be granted or iſſued within the term aforeſaid, and made returnable to the ſaid Court holden at *Falmouth*, which by virtue of this act ought to be made returnable to the ſaid Court at *Pownalborough*, ſhall be transferred and returned to the ſaid Supreme Judicial Court at *Pownalborough*, and ſhall be proceeded on in manner as aforeſaid; and all perſons concerned are to conduct themſelves and appear accordingly.

IV. *And be it further enacted*, That the ſeveral acts, and clauſes of acts, for holding a Supreme Judicial Court at *Falmouth*, within the county of *Cumberland*, for the counties of *Cumberland* and *Lincoln*, ſhall be, and hereby are repealed, ſo far as the ſame reſpect the county of *Lincoln*; and henceforth there ſhall be the ſame proceedings in, and by the ſaid Supreme Judicial Court, within and for the county of *Cumberland*, as are by law had in the other counties of this Commonwealth.

[This act paſſed *February* 13, 1786.]

An Act for determining at what Times and Places, the ſeveral Courts of General Seſſions of the Peace, and Courts of Common Pleas, ſhall be held, within and for the ſeveral Counties within this Commonwealth, and for repealing all Laws heretofore made for that purpoſe.

Laws heretofore enacted, repealed.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That from and after the firſt day of *June* next, all the laws heretofore enacted, and now in force, determining the times and places for holding the ſeveral Courts of General Seſſions of the Peace, and

Courts

Courts of Common Pleas, within and for the ſeveral counties in this Commonwealth, ſo far as reſpects the times and places for holding the ſaid Courts, be, and they hereby are repealed.

II. *And be it further enacted by the authority aforeſaid*, That the times and places for holding the Courts of General Seſſions of the Peace, and Courts of Common Pleas, within and for each county in this Commonwealth, ſhall, from and after the firſt day of *June* next, be as follows, *viz.*

Times and places fixed for holding Courts.

Within and for the county of *Suffolk*, at *Boſton*, on the firſt Tueſday in *January*, and the firſt Tueſday in *July*.

Within and for the county of *Eſſex*, at *Ipſwich*, on the firſt Tueſday in *April*; at *Salem*, the ſecond Tueſday in *July*; at *Newbury-Port*, the laſt Tueſday in *September*.

Within and for the county of *Middleſex*, at *Cambridge*, on the ſecond Tueſday in *March*; at *Concord*, on the ſecond Tueſday of *September*.

Within and for the county of *Hampſhire*, at *Springfield*, on the ſecond Tueſday of *February*; at *Northampton*, the laſt Tueſday in *Auguſt*.

Within and for the county of *Plymouth*, at *Plymouth*, on the ſecond Tueſday of *April*, and the laſt Tueſday of *October*.

Within and for the county of *Barnſtable*, at *Barnſtable*, on the firſt Tueſday of *April*, and the firſt Tueſday of *November*.

Within and for the county of *Briſtol*, at *Taunton*, on the ſecond Tueſday of *March*, and the ſecond Tueſday of *September*.

Within and for the county of *York*, at *York*, on the ſecond Tueſday of *April*; and at *Biddeford*, on the ſecond Tueſday of *October*.

Within and for the county of *Dukes-County*, at *Edgartown*, on the firſt Tueſday of *March*; and at *Tiſbury*, on the laſt Tueſday of *October*.

Within and for the county of *Nantucket*, at *Sherburne*, on the laſt Tueſday of *March*, and the firſt Tueſday of *October*.

Within and for the county of *Worceſter*, at *Worceſter*, on the laſt Tueſday in *March*, and on the firſt Tueſday in *September*.

Within and for the county of *Cumberland*, at *Portland*, on the laſt Tueſday in *May*, and on the laſt Tueſday in *October*.

Within and for the county of *Lincoln*, at *Hallowell*, on the ſecond Tueſday in *January*; at *Pownalborough*, on the firſt Tueſday in *June*; and at *Waldoborough*, on the ſecond Tueſday of *September*.

Within and for the county of *Berkſhire*, at *Lenox*, on the ſecond Tueſday in *September*, and the firſt Tueſday of *February*.

III. *And be it further enacted*, That all appeals already made, recognizances taken, or that may before the aforeſaid firſt day of *June* next, be made or taken, to any Courts of General Seſſions of the Peace, and all actions already commenced, or that may be commenced before the aforeſaid firſt day of *June*, and all appeals claimed, or which may be claimed, and all actions pending at any Court of Common Pleas, which before the operation of this act, ſhould have been holden at any other time or place, than thoſe in this act affixed,

Appeals already made, &c. how returnable.

for holding ſaid Courts, ſhall be returnable to, entered, made, proceeded on, tried and determined, at the Courts next to be holden in each county, after ſaid firſt day of *June*, agreeably to the true intent of ſuch writ, proceſs, recognizance or appeal.

[This act paſſed *March* 2, 1787.]

An Act for the Relief of, and to prevent Debtors being obliged to pay Intereſt on Debts now due, where a legal Tender of the ſame has been made to the Creditor, before the firſt Day of *January*, one Thouſand ſeven Hundred and Seventy-Seven, in the then circulating Currency.

Preamble. WHEREAS by an act of the General Court, paſſed the twenty-ſixth day of *September*, one thouſand ſeven hundred and ſeventy-ſix, entitled, "*An Act to prevent forging and altering bills of public credit, and for preventing the depreciation thereof, and for making the bills of credit of the United Colonies, and the bills of this government a tender, in all payments*;" it was among other clauſes enacted, that the bills of credit of the United Colonies, eſtabliſhed by the American Congreſs, and the bills of this government, ſhall be received in all payments within this Colony: and a tender of the ſame may be pleaded in bar to any action brought for the recovery of money or ſpecies of money, due by deed or ſimple contract, or in any way or manner whatever:

And whereas by an act of the General Court, paſſed the ſixth day of *July*, one thouſand ſeven hundred and eighty-one, entitled, "*An Act providing for the payment of the intereſt on the new bills of credit, and fixing the rate at which they ſhall be received into the treaſury, for ſuſpending the making up judgment in civil cauſes for a limited time, and repealing all the laws heretofore paſſed for making the ſaid bills a tender*;" the ſaid act of *September* the twenty-ſixth, one thouſand ſeven hundred and ſeventy-ſix, was repealed to all intents and purpoſes, and no proviſion is made in the ſaid act of one thouſand ſeven hundred and eighty-one, for the relief of perſons who gave full credit to the paper currency then circulating, and received it in all payments without any diſcount, and having tendered the ſame to their creditors before the firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven, it has been refuſed by the ſaid creditor or creditors, and they are now liable to pay the intereſt on the ſaid debts notwithſtanding the ſaid tender, whereby many honeſt debtors will be greatly injured, having ſunk nearly the whole of the principal by their creditors refuſing to receive the money at that time, and are now liable to pay both principal and intereſt in ſpecie, which is unjuſt, and may probably be the ruin of many valuable members of the community, if ſome proviſion is not made for their relief:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That where an action or actions that hath or ſhall be brought by any perſon or perſons in any Court of law within this Commonwealth, proper to try the ſame, for the recovery of any debt contracted before the firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven, and it ſhall be made to appear to the ſaid Court, that a legal tender has been made of the ſame, before the ſaid firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven, to the creditor, that then and in all ſuch caſes the Court before whom the ſaid cauſe ſhall be tried, be, and they are hereby empowered and directed to make up judgment for the principal, and intereſt only to the time of the ſaid tender being made, and not allow any intereſt on the ſaid debt after the date of the ſaid tender; *provided* it was made before the firſt day of *January*, one thouſand ſeven hundred and ſeventy-ſeven; and the original defendant or defendants in any action now depending in the Supreme Judicial Court, or either of the Courts of Common Pleas in this Commonwealth, when a tender has been made as aforeſaid, may plead the ſame in ſuch manner as if the ſaid action had been commenced after the paſſing this act, and no continuance or appeal had taken place.

Intereſt not allowed after a tender has been made.

Proviſo.

II. *And be it further enacted by the authority aforeſaid,* That in caſe a tender was made at any time ſince the firſt day of *January*, one thouſand ſeven huedred and ſeventy-ſeven, or at any time, to executors, adminiſtrators, agents, attornies, or to any other perſons acting in truſt, the ſame proceedings ſhall be had as in ſuch caſe are directed by the law of this Commonwealth, paſſed in the year of our Lord, one thouſand ſeven hundred and eighty, for eſtabliſhing a rule of depreciation.

Tenders made after Jan. 1777, directions in this caſe.

[This act paſſed *March* 11, 1785.]

An Act declaring void certain pretended Judgments given in the Town of *Boſton*, between the nineteenth Day of *April*, in the Year of our Lord, one Thouſand ſeven Hundred and Seventy-Five, and the Seventeenth Day of *March* next following.

WHEREAS between the nineteenth day of April, *in the year of our Lord, one thouſand ſeven hundred and ſeventy-five, and the ſeventeenth day of* March *next following, and whilſt the town of* Boſton *was in the poſſeſſion of the* Britiſh *troops, and the impartial adminiſtration of juſtice was obſtructed, certain pretended judgments were rendered againſt divers perſons who had left the ſaid town, and ſought the protection of their county; and ſuch proceedings have been had thereon as may greatly vex and injure many good citizens of this Commonwealth, unleſs the ſame be declared null and void:*

Preamble.

I.

Pretended judgments rendered null and void.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all ſuch pretended judgments rendered in the town of *Boſton*, between the nineteenth day of *April*, in the year of our Lord, one thouſand ſeven hundred and ſeventy-five, and the ſeventeenth day of *March* next following, by any perſons pretending to conſtitute any Superior Court of Judicature, Court of Aſſize, or Court of General Goal Delivery, or Inferior Court of Common Pleas for the county of *Suffolk*, and which have not been heretofore provided againſt by law, and all proceedings had thereon, or by the authority of the ſame, be, and hereby are declared to be null and void, and ſhall be ſo deemed, taken and known.

[This act paſſed *November* 29, 1785.]

An Act for the Eaſe of the Citizens concerning Actions upon penal Statutes.

Actions, ſuits, &c. which ſhall hereafter be commenced, for any forfeiture upon any penal ſtatute, ſhall be brought within one year after the offence committed, &c.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That all actions, ſuits, bills or informations, which ſhall hereafter be had, brought, ſued, or commenced, for any forfeiture, upon any penal ſtatute, made or to be made, the benefit whereof, is or ſhall be by the ſaid ſtatute, limited in whole or in part, to the perſon or perſons, who ſhall inform and proſecute in that behalf, ſhall be had, brought, ſued or commenced, by any perſon that may lawfully purſue the ſame, as aforeſaid, within one year next after the offence committed, or to be committed, againſt the ſaid ſtatute, and in default of ſuch purſuit, then the ſame ſhall be had, brought, or proſecuted for the Commonwealth, at any time within two years after the offence committed; and if any action, ſuit, indictment or information, for any offence againſt any penal ſtatute, ſhall be brought after the time in that behalf limited, the ſame ſhall be void, and of none effect, any act to the contrary notwithſtanding.

Proviſo.

Provided always, That when any action, ſuit or information, is or ſhall be limited, by any penal ſtatute, to be had, ſued, commenced or brought within a ſhorter time, than is abovementioned, in every ſuch caſe, the action, ſuit or information, ſhall be brought within the time limited by ſuch ſtatute.

Further proviſo.

Provided alſo, That this act, or any clauſe contained therein, ſhall not extend to any action, ſuit, indictment or information, which ſhall hereafter be had, brought, ſued or commenced for offences heretofore committed, by any perſon or perſons, againſt any act or acts, for reſtraining the taking of exceſſive uſury, if the perſon or perſons, who may be ſued or proſecuted therefor, have for the ſpace of one year from the paſſing this act, refuſed or neglected to make reſtitution of the full amount of the exceſſive uſury, by him or them, ſo heretofore taken or received, and the lawful intereſt thereof, from the time the ſame was taken, to the perſon or perſons, his

or their executors or adminiſtrators, or to his or their lawful agents or attornies, from whom ſuch exceſſive uſury has been taken, or received as aforeſaid, if by them thereunto required, in perſon, at any time within the ſaid year, or by writing left at his or their laſt and uſual place of abode, fourteen days at leaſt, before the expiration of the ſaid year; the coſt of travel to make ſuch requeſt, to be paid by the perſon or perſons guilty of taking the exceſſive uſury; but in all ſuch caſes, the action, ſuit, indictment or information, had, ſued and commenced, for the offences aforeſaid, ſhall and may be ſuſtained and proſecuted to final judgment, any thing in this act to the contrary notwithſtanding: Provided the ſame be commenced within two years after the paſſing this act, and not otherwiſe.

II. *And be it further enacted by the authority aforeſaid,* That in all informations to be exhibited, and in all actions or ſuits to be commenced, againſt any perſon or perſons, on the behalf of any informer, or on the behalf of the Commonwealth, and any informer, for or concerning any offence committed or to be committed againſt any penal ſtatute, the offence ſhall be laid and alledged to have been committed, in the county where ſuch offence was in truth committed and not elſewhere; and if the defendant in any ſuch information, action or ſuit, pleadeth that he owes nothing, or that he is not guilty, and the plaintiff or informer in ſuch information, action or ſuit, upon evidence to the jury, that ſhall try ſuch iſſue, ſhall not both prove the offence laid, in the ſaid information, action or ſuit, and that the ſame offence was committed in that county, the iſſue ſhall be found for the defendant or defendants.

When informations are exhibited, or actions commenced,—the offence ſhall be laid and alledged to have been committed in the county where the ſame was in truth committed, &c.

III. *And be it further enacted by the authority aforeſaid,* That if any information, ſuit or action, ſhall be brought or exhibited againſt any perſon or perſons, for any offence committed or to be committed, againſt the form of any penal law, on behalf of any informer, or on behalf of the Commonwealth and any informer, it ſhall be lawful for ſuch defendants, to plead the general iſſue, and give any ſpecial matter in evidence to the jury, which ſhall be as available to him or them, as if he or they had ſufficiently pleaded the ſame matter in bar, or diſcharge of ſuch information, ſuit or action.

Defendants may plead the general iſſue, &c.

Provided always, That this act or any clauſe contained therein, ſhall not extend to any information, ſuit or action, grounded upon any law or ſtatute, concerning the concealing or defrauding the Commonwealth of any cuſtoms, duties, impoſt or exciſes.

Proviſo.

[This act paſſed *June* 19, 1788.]

An Act in addition to an Act preſcribing Forms of Writs in civil Cauſes, and directing the Mode of proceeding therein.

WHEREAS in the form of executions in civil cauſes, preſcribed in the ſaid act, no proviſion is made for aſcertaining the times at which the ſaid executions are to be returned:

Preamble.

Executions, how returnable.

I. *Therefore be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all executions iſſued upon any judgment in civil cauſes, ſhall be made returnable at ſuch times as are provided by the ſeveral laws of this Commonwealth, any thing in the ſaid form to the contrary notwithſtanding.

Thoſe iſſued after firſt May next, how expreſſed.

II. *And be it enacted by the authority aforeſaid,* That in all caſes where a writ of execution ſhall iſſue after the firſt day of *May* next, there ſhall be expreſſed therein the time and place when and where the ſame ſhall be returnable. *Provided nevertheleſs,* That all executions already iſſued ſince the paſſing of the ſaid act, or which may be iſſued within thirty days after the firſt day of *April* next, agreeable to the ſaid form, ſhall be good and valid in the law, to all intents and purpoſes.

Proviſo.

[This act paſſed *March* 14, 1785.]

[*The foregoing Act ſhould have been inſerted in page* 164, *immediately after the Act to which it is in addition, but was accidentally omitted.*]

Perpetual



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART IV.

Criminal Matters.

An Act againſt Treaſon and Miſpriſion of Treaſon, and for regulating Trials in ſuch Caſes, and directing the Mode of executing Judgments againſt Perſons attainted of Felony.

BE it enacted and declared by the Council and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That all perſons abiding within this State, and deriving protection from the laws of the ſame, owe allegiance to this State, and are members thereof; and that all perſons paſſing through, viſiting, or making a temporary ſtay in this State, being intitled to, and actually receiving the protection of the laws during the time of ſuch viſitation, or temporary ſtay, owe during the ſame time allegiance to this State.

Who are the perſons owing allegiance.

II. *And be it further enacted by the authority aforeſaid,* That all perſons, members of, or owing allegiance to this State, as before deſcribed, who ſhall within or without the limits of this State, levy war, or conſpire to levy war againſt this State, or againſt any other of the United States of *America*, or ſhall within or without the limits of this State, be adherent to the enemies of this State, or of any other of the ſaid United States, giving to them aid and comfort within

All perſons ſo owing allegiance that ſhall levy war againſt this State and be attainted, ſhall ſuffer death.

within or without the limits of this State, and thereof be provably attainted of open deed by the people of their condition, ſuch perſons ſhall be taken, deemed and adjudged guilty of Treaſon againſt this State, and ſhall ſuffer the pains of death without the benefit of clergy.

All perſons owing allegiance to any other of the United States and ſhall within this State conſpire to levy war, to be deemed guilty of treaſon

III. *And be it further enacted by the authority aforeſaid,* That all perſons owing allegiance to any other of the ſaid United States, who ſhall within this State, levy war, or conſpire to levy war againſt this, or any other of the ſaid United States, or be adherent to the enemies of this or of any other of the ſaid United States, giving to them aid and comfort within this State, and thereof be provably attainted of open deed by the people of their condition, ſuch perſons ſhall be taken, deemed and adjudged guilty of Treaſon againſt this State, and ſhall ſuffer as is aforementioned.

Concealment of any treaſon the offender to forfeit all his goods and ſhall ſuffer impriſonment.

IV. *And be it further enacted by the authority aforeſaid,* That concealment or keeping ſecret of any Treaſon, be deemed and taken only miſpriſion of Treaſon, and the offender therein ſhall forfeit to the uſe of this State, all his goods and chattles, and the profits of his lands during his life, and ſhall and may be impriſoned for a term not leſs than two years, nor exceeding five years, at the diſcretion of the Court before whom he ſhall be convicted.

Any perſon who ſhall know of any treaſon committed and not give informationſhall be guilty of miſpriſion of treaſon.

V. *And be it further enacted by the authority aforeſaid,* That any perſon who ſhall know of any Treaſon to be committed (and is no party or conſenter to it) and ſhall not within a reaſonable time give information thereof, upon oath, to one of the Juſtices of the Superior Court of Judicature, Court of Aſſize, and General Goal Delivery, or ſome Juſtice of the Peace within this State, to the end the offender or offenders therein may be apprehended, and be ameſnable to juſtice, ſhall be taken and deemed to be guilty of miſpriſion of Treaſon, or concealment of Treaſon.

Superior Court to have cognizance of all offences againſt this act.

VI. *And be it further enacted by the authority aforeſaid,* That all manner of offences made and declared by this act, or which ſhall hereafter be made, and declared by any the laws and ſtatutes of this State, to be Treaſon, miſpriſion of Treaſon, or concealment of Treaſon, which ſhall hereafter be done, perpetrated or committed by any perſon or perſons without the limits of this State, ſhall be inquired of, heard and determined before the Juſtices of the Superior Courts of Judicature, Court of Aſſize and General Goal Delivery, within ſuch county as the Supreme Executive authority of this State ſhall order and direct, by good and lawful men of the ſame county, in like manner and form, to all intents and purpoſes, as if ſuch Treaſons, miſpriſion of Treaſons or concealment of Treaſon had been done, perpetrated and committed within the ſame county.

Perſon indicted may be outlawed.

VII. *And be it further enacted by the authority aforeſaid,* That any perſon or perſons being indicted for any the Treaſons, or miſpriſions of the Treaſons aforeſaid, may be outlawed, and thereby attainted of, or for any of the ſaid offences of Treaſon, or miſpriſon of Treaſon. And that all proceſs of outlawry hereafter to be made and had within this State, againſt any offenders in Treaſon, or miſpriſion of Treaſon, being reſident or inhabitant out of the limits of this State at the time of the outlawry pronounced againſt them,

ſhall

ſhall be as good and effectual in the law to all intents and purpoſes, as if any ſuch offenders had been reſident and dwelling within this State, at the time of ſuch proceſs awarded and outlawry pronounced.

Perſons outlawed, in caſe they ſurrender within one year to the Chief Juſtice, and offer to traverſe the indictment, may be tried.

VIII. *Provided always, and be it enacted by the authority aforeſaid,* That if the party ſo hereafter to be outlawed, ſhall within one year next after the ſaid outlawry pronounced, or judgment given upon the ſaid outlawry, yield himſelf unto the chief Juſtice of the State for the time being, and offer to traverſe the indictment, whereupon the ſaid outlawry ſhall be pronounced as is aforeſaid, that then he ſhall be received to the ſaid traverſe, and being thereupon found not guilty, by the verdict of twelve good and lawful men, he ſhall be clearly acquitted and diſcharged of the ſaid outlawry, and of all penalties and forfeitures by reaſon of the ſame, in as large and ample manner and form as though no ſuch outlawry had been made. And where after ſuch outlawry, the party outlawed ſhall come in and be tried as aforeſaid, he ſhall upon ſuch trial have the full benefit of this act.

Forfeiture upon conviction of treaſon.

IX. *And be it further enacted by the authority aforeſaid,* That every offender and offenders being hereafter lawfully convict of any manner of Treaſons by proceſs of outlawry, according to the due courſe of law, ſhall loſe and forfeit to the uſe of this State, all goods and chattles which he ſhall be poſſeſſed of at the time of ſuch conviction, and all lands, tenements and hereditaments, which any ſuch offender or offenders ſhall have of any eſtate of inheritance in uſe or poſſeſſion, by any right, title or means within this State, or elſewhere, at the time of any ſuch Treaſon, committed, or any time after. Saving to every perſon and perſons, their heirs and ſucceſſors, (other than the offenders in any Treaſons, their heirs and ſucceſſors, and ſuch perſon and perſons as claim to any their uſes,) all ſuch rights, titles, intereſts, poſſeſſions, leaſes, rents, offices, and other profits which they ſhall have at the day of committing ſuch Treaſons, or at any time afore, in as large and ample manner as if this act had never been made.

Whereas nothing is more juſt and reaſonable than that perſons proſecuted for Treaſon and miſpriſion of Treaſon, whereby their liberties, lives, honour, and eſtates may be loſt and taken away, ſhould be juſtly and equally tried, and that perſons accuſed as offenders therein, ſhould not be debarred of all juſt and equal means for defence of their innocency in ſuch caſes; in order thereunto, and for the better regulation of trials of perſons proſecuted for Treaſon and miſpriſion of Treaſon:

Perſons indicted to have a copy of the indictment before they make anſwer thereto.

X. *Be it enacted by the authority aforeſaid,* That all and every perſon and perſons whatſoever, that ſhall be accuſed and indicted for Treaſon, or for miſpriſion of Treaſon, ſhall have a true copy of the whole indictment delivered unto them, or any of them, two full days at the leaſt, before he or they ſhall be arraigned for the ſame, whereby to enable them, and any of them reſpectively, to adviſe with counſel thereupon, to plead and make their defence, his or their attorney or attornies, agent or agents, or any of them requiring the ſame, and paying the officer his reaſonable fees for writing

thereof, not exceeding *ſix ſhillings* for the copy of every ſuch indictment; and that every ſuch perſon ſo accuſed and indicted, arraigned or tried for any Treaſon as aforeſaid, or for miſpriſion of Treaſon, ſhall be received and admitted to make his and their full defence by counſel learned in the law, and to make any proof that he or they can produce by lawful witneſs or witneſſes, who ſhall then be upon oath for his and their juſt defence in that behalf; and in caſe any perſon or perſons ſo accuſed and indicted, ſhall deſire counſel, the Court before whom ſuch perſon or perſons ſhall be tried, or ſome Judge of that Court, ſhall, and is hereby authorized and required immediately upon his or their requeſt, to aſſign to ſuch perſon or perſons, ſuch and ſo many counſel, not exceeding two, as the perſon or perſons ſhall deſire, to whom ſuch counſel ſhall have free acceſs at all ſeaſonable hours.

Council allowed to priſoners.

XI. *And be it further enacted by the authority aforeſaid,* That no perſon or perſons whatſoever ſhall be indicted, tried, or tainted of Treaſon, or of miſpriſion of Treaſon, but by and upon the oaths and teſtimony of two lawful witneſſes, either both of them to the ſame overt act, or one of them to one, and the other of them to another overt act of the ſame ſpecies of Treaſon, unleſs the party indicted and arraigned, or tried, ſhall willingly, without violence, in open Court, confeſs the ſame.

Two witneſſes neceſſary to a conviction, unleſs, &c.

XII. *And be it further enacted by the authority aforeſaid,* That if any perſon indicted for Treaſon or miſprſion of Treaſon, and being ararigned thereupon, ſhall ſtand mute, a Jury ſhall forthwith be empannelled and ſworn to try and ſay, whether the perſon ſo ſtanding mute, ſtandeth mute by the providence and act of God, or fraudulently, willfully and obſtinately; and if they ſhall return their verdict that he ſtandeth mute by the providence and act of God, the Court ſhall thereupon cauſe him to be remanded to priſon, and ſhall not proceed againſt him until he ſhall have recovered therefrom; but if the Jury ſhall return their verdict that the priſoner ſo ſtanding mute, ſtandeth mute fraudulently, willfully and obſtinately, then the Court ſhall cauſe to be entered upon the indictment againſt the priſoner the plea of not guilty, and ſhall proceed upon his trial in like manner in all reſpects as if the priſoner had voluntarily pleaded the ſame plea thereto, and put himſelf upon God and the country for his trial, except that the priſoner ſhall not be admitted to make any challenges to the Jurors.

How mute perſons are to be dealt with.

XIII. *And be it further enacted by the authority aforeſaid,* That every perſon indicted for Treaſon or miſpriſion of Treaſon, who ſhall have voluntarily and duly pleaded to ſuch indictment, and put himſelf upon God and the country for trial, ſhall be admitted peremptorily to challenge twenty of the Jury and no more; and if any perſon indicted as aforeſaid, after having voluntarily pleaded as aforeſaid, ſhall refuſe to put himſelf upon God and the country for trial, or ſhall peremptorily challenge a greater number of the Jury than twenty, the Court ſhall diſallow of all challenges, over and above the ſaid number of twenty; and the Jury ſhall be charged, and the trial ſhall proceed in like manner, in all reſpects, and the like judgment ſhall be given, as would and ought to have been had and given

Priſoners pleading to an indictment may challenge twenty Jurors peremptorily.

if

if the perſon ſo indicted as aforeſaid, and having pleaded as aforeſaid, had duly put himſelf upon God and the country for his trial, and had not peremptorily challenged a greater number of the Jury than in and by this act he is admitted to challenge.

Attorney General may not peremptorily challenge any Juror.

XIV. *And be it further enacted by the authority aforeſaid*, That the Attorney-General, or any other perſon proſecuting for and in behalf of this State, ſhall not be admitted in any caſe whatever, peremptorily to challenge any Juror about to be empanneled for the trial of any criminal accuſation or charge.

One witneſs to one overt act, and another to a ſecond, is not two witneſſes in this act intended.

XV. *And be it further enacted by the authority aforeſaid*, That if two or more diſtinct Treaſons of divers heads or kinds ſhall be alledged in one bill of indictment, one witneſs produced to prove one of the ſaid Treaſons, and another witneſs produced to prove another of the ſaid Treaſons, ſhall not be deemed or taken to be two witneſſes to the ſame Treaſon, within the meaning of this act.

XVI. *And be it further enacted by the authority aforeſaid*, That no evidence ſhall be admitted or given of any overt act that is not expreſsly laid in the indictment againſt any perſon or perſons whatſoever.

Priſoners to have a liſt of the Jurors two days before trial, and to have proofs to compel witneſſes to appear for them.

XVII. *And be it further enacted by the authority aforeſaid*, That all and every perſon and perſons who ſhall be accuſed, indicted and tried for Treaſon as aforeſaid, or for miſprſiion of Treaſon, ſhall have copies of the pannel of the Jurors who are to try them, delivered unto them and every of them ſo accuſed and indicted reſpectively, two days at leaſt before he or they ſhall be tried for the ſame; and that all perſons ſo accuſed and indicted for any Treaſon as aforeſaid, or for miſpriſion of Treaſon, ſhall have the like proceſs of the Court where they ſhall be tried to compel their witneſſes to appear for them at any ſuch trial or trials, as is uſually granted to compel witneſſes to appear againſt them.

No indictment to be quaſhed for falſe grammar, &c. unleſs exception is ſeaſonably taken.

XVIII. *And be it further enacted by the authority aforeſaid*, That no indictment for any of the offences aforeſaid, nor any proceſs or returns thereupon, ſhall be quaſhed on the motion of the priſoner or his counſel, for miſwriting, miſſpelling, falſe or improper Engliſh, unleſs exception concerning the ſame be taken and made in the reſpective Courts where ſuch trial ſhall be, by the priſoner or his counſel aſſigned, before any evidence given in open Court upon ſuch indictment; nor ſhall any ſuch miſwriting, miſſpelling, falſe or improper Engliſh, after conviction on ſuch indictment, be any cauſe to ſtay or arreſt judgment thereupon.

Judgment given upon indictment liable to a reverſal by a writ of errour.

XIX. *And be it further enacted by the authority aforeſaid*, That judgment given upon any indictment ſhall and may be liable to be reverſed upon a writ of errour to be brought by the perſon thereby attained, or in caſe of his death, by any of his heirs in the ſame Court wherein ſuch judgment was had and given.

And to the intent that the terror and dread of ſuch criminal proſecutions may in ſome reaſonable time be removed:

Limitation.

XX. *Be it further enacted by the authority aforeſaid*, That no perſon or perſons whatſoever, ſhall be indicted, tried or proſecuted, for any Treaſon, or for miſpriſion of Treaſon, that ſhall be committed or done in violation of this act, unleſs the indictment for the ſame be found within three years next after the Treaſon done or committed.

XXI.

XXI. *Provided always, and be it further enacted by the authority aforeſaid,* That this act or any thing therein contained, or any attainder or attainders, of any perſon or perſons, for any offence or offences made Treaſon by this act, ſhall not in any wiſe extend or be judged, interpreted or expounded to make any corruption of blood to any the heir or heirs of any ſuch offender or offenders, or to make the wife of any ſuch offender to loſe or forfeit her dower of or in any lands, tenements or hereditaments, or her title, action or intereſt in or to the ſame, any thing in this act contained, or any other law to the contrary notwithſtanding.

Attainders upon this act not to make any corruption of Blood.

XXII. *And be it further enacted by the authority aforeſaid,* That this State ſhall be deemed and adjudged in actual and real poſſeſſion of the lands, tenements, hereditaments, uſes, goods, chattels and all other things of the offender attainted of Treaſon, or miſpriſion of Treaſon as aforeſaid, which ſuch offender ſo being attainted, ought, or might lawfully loſe and forfeit to the uſe of this State immediately upon ſuch attainder.

The State to be adjudged ſeized in fact of the eſtates of convicts.

XXIII. *And be it further enacted by the authority aforeſaid,* That every perſon who ſhall be attainted of Treaſon within this State, whether male or female, ſhall be puniſhed by being hanged by the neck until they are dead, and not otherwiſe; any law or cuſtom to to the contrary notwithſtanding.

Puniſhment & mode of execution.

XXIV. *And be it further enacted by the authority aforeſaid,* That no perſon upon whom ſentence or judgment of death ſhall be paſſed or given by the Juſtices of the Superior Court of Judicature, Court of Aſſize and General Goal Delivery, ſhall be executed and put to death in purſuance of ſuch judgment, before the whole record of ſuch proceedings or caſe be certified by the Clerk of the ſame Court under the ſeal thereof, to the Supreme Executive Authority of this State, nor until a warrant ſhall be iſſued by the ſaid Supreme Executive Authority, under the great ſeal of this State, with a copy of the record thereunto annexed, directed to the Sheriff of the county wherein the trial of the perſon ſo attainted as aforeſaid, was had, commanding the ſame Sheriff to cauſe execution to be done upon the perſon ſo attainted as aforeſaid, in all things according to the judgment againſt him. And the Sheriff to whom ſuch warrant ſhall be directed, is hereby authorized and required to execute the ſame in due form of law.

No perſon to be executed without warrant under the great ſeal.

Provided always, and be it further enacted by the authority aforeſaid, That ſuch parts of this act as relate to the regulation of trials, ſhall not extend, or be conſtrued to extend to any impeachment or other proceeding in the General Aſſembly of this State.

This act not to extend to impeachments in the General Aſſembly.

[*This act paſſed previous to the adoption of the preſent Conſtitution of Government, in the Seſſion of the General Court, at* Watertown, 1777, *and has not as yet been reviſed.*]

An

An Act in addition to an Act, entitled, "An Act againſt Treaſon, Miſpriſion of Treaſon, and Concealment of Treaſon, and for regulating Trials in ſuch Caſes, and for directing the Mode of executing Judgments againſt Perſons attainted of Felony."

WHEREAS in and by the ſame act it is enacted and declared, "that all manner of offences thereby made and declared, or which ſhould thereafter be made declared, by any law or ſtatute of this State, to be Treaſon, miſpriſion of Treaſon, or concealment of Treaſon, which ſhould thereafter be done, perpetrated or committed, by any perſon or perſons without the limits of this State, ſhould be enquired of, heard and determined, before the Juſtices of the Superior Court of Judicature, Court of Aſſize and General Goal Delivery, within ſuch county as the Supreme Executive Power ſhould order and direct:" from whence great inconvenience and delay may ariſe: Preamble.

I. *Be it therefore enacted by the Council and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That any perſon, inhabitant of this State, who now is, or who hereafter ſhall be guilty of any offence which by any ſtatute or law of this State, has been, or hereafter ſhall be declared to be Treaſon, miſpriſion of Treaſon, or concealment of Treaſon, and which has been, or hereafter ſhall be done, perpetrated or committed, without the limits of this State, ſuch perſon ſhall be tried therefor before the Superior Court of Judicature, Court of Aſſize and General Gaol Delivery, holden for the county whereof ſuch perſon is an inhabitant, in the ſame manner to all intents and purpoſes as if the ſame offence had been done, perpetrated and committed in the ſame county; and ſhall, if thereof convicted in the ſame county, be adjudged and puniſhed in the ſame manner as if the ſaid offence had been therein committed. Perſons guilty to be tried before the Superior Court of Judicature, &c. holden for the county where ſuch perſon is an inhabitant.

[This act paſſed *January* 25, 1779.]

An Act againſt Murder and Manſlaughter.

BE it declared and enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That whoſoever ſhall commit wilful Murder, of malice aforethought, and being thereof convicted before the Juſtices of the Supreme Judicial Court, ſhall ſuffer the pains of death. Murderers to ſuffer death.

I. *And be it further enacted by the authority aforeſaid,* That whoſoever ſhall commit Manſlaughter, and being thereof convicted before the Juſtices of the Supreme Judicial Court, ſhall be liable to be ſet on the gallows for the ſpace of one hour, with a halter about his neck, and one end thereof caſt over the gallows; to be branded in the forehead with the letter M. to be impriſoned, not more than twelve months; and to be bound to the good behaviour: And the Puniſhment for manſlaughter.

ſame Juſtices ſhall ſentence the ſaid convict to ſuffer all or part of theſe puniſhments, according to the aggravation of the offence.

[This act paſſed *February* 28, 1785.]

An Act for annuling the Diſtinction between the Crimes of Murder and Petit-Treaſon.

WHEREAS it does not appear reaſonable any longer to continue the diſtinction between the crimes of Murder and Petit-Treaſon:

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That from and after the paſſing this act, in all caſes wherein heretofore any perſon or perſons would have been deemed or taken to have committed the crime of Petit-Treaſon, ſuch perſon or perſons ſhall be deemed and taken to have committed the crime of Murder only, and indicted and proſecuted to final judgment accordingly; and the ſame puniſhment only ſhall be inflicted as in caſe of Murder.

[This act paſſed *March* 16, 1785.]

An Act againſt Burglary.

BE it declared and enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That if any perſon ſhall in the night time burglariouſly break and enter any dwelling-houſe, with intent to kill, rob, ſteal, commit rape, or to do or perpetrate any other felony, the perſon ſo offending, and being thereof convicted, ſhall ſuffer the pains of death.

[This act paſſed *March* 7, 1785.]

An Act for the Puniſhment of Robbery.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That every perſon who ſhall feloniouſly aſſault, rob, and take from the perſon of another, any money, goods, chattles or other property that may be the ſubject of theft, and ſhall be thereof convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer the pains of death.

Puniſhment for robbery.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall with any offenſive weapon, or by menaces, or in any forcible or violent manner aſſault any perſon, and demand of him any goods, money or other property that may be the ſubject of theft, with a felonious intent to rob him, and being thereof convicted,

Puniſhment for an aſſault, with a felonious intent.

victed, he ſhall be puniſhed by fine, not exceeding *one thouſand pounds*, impriſonment, ſetting in the pillory, whipping, ſetting on the gallows with a rope about his neck, and the other end thereof thrown over the gallows, confinement to hard labour, not exceeding three years, or either of theſe puniſhments, according to the degree and aggravation of the offence.

[This act paſſed *March* 9, 1785.]

An Act againſt Sodomy.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any man ſhall lay with mankind as he layeth with a woman, or any man or woman ſhall have carnal copulation with any beaſt or brute creature, and be thereof duly convicted, the offender, in either of thoſe caſes, ſhall be adjudged guilty of felony, ſhall be ſentenced to ſuffer the pains of death, and the beaſt ſhall be ſlain, and every part thereof burned. Perſons convicted, to ſuffer death.

And be it further enacted by the authority aforeſaid, That ſuch order and form of proceſs ſhall be had and uſed, in trial of ſuch offenders, and ſuch judgment given, and execution done, upon the offender, as in caſes of Murder. Such proceſs &c. uſed, as in caſes of murder

[This act paſſed *March* 3, 1785.]

An Act for the Puniſhment of Rape.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That if any man ſhall raviſh and carnally know any woman, committing carnal copulation with her by force againſt her will, or if any man ſhall unlawfully and carnally know and abuſe any woman child under the age of ten years, every perſon offending in either of thoſe caſes before mentioned, being thereof convicted, ſhall be adjudged guilty of felony, and ſhall be ſentenced to ſuffer the pains of death.

[This act paſſed *March* 16, 1785.]

An Act to Prevent the Deſtroying and Murdering of Baſtard Children.

WHEREAS many lewd and diſſolute women, being pregnant with baſtard children, who regardleſs of natural affection, and to avoid ſhame and eſcape puniſhment, do conceal their pregnancy, and the birth and death of ſuch children, by means whereof many of them periſh for want of neceſſary and uſual aſſiſtance, and it cannot be known that they were not murdered: Preamble.

Penalty for concealing pregnancy, &c.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That if any woman ſhall conceal her pregnancy, and ſhall willingly be delivered in ſecret by herſelf of any iſſue of her body, male or female, which ſhall by law be a baſtard, every ſuch woman ſo offending, ſhall pay a fine not exceeding the ſum of *fifty pounds*, to the uſe of this Commonwealth, to be recovered by information or indictment in any Court proper to try the ſaid offence, or impriſoned, not exceeding three months, at the diſcretion of the Court.

Penalty for concealing the death of a baſtard.

II. *And be it further enacted by the authority aforeſaid,* That if any woman ſhall endeavour privately, either by herſelf or the procurement of others, to conceal the death of any ſuch iſſue of her body, which if it were born alive would by law be a baſtard, ſo that it may not come to light whether it were born alive or not, or whether it was murdered or not, in every ſuch caſe, the mother ſo offending ſhall be ſet upon the gallows, with a rope about her neck, for the ſpace of one hour, and be further puniſhed by being bound to the good behaviour, at the diſcretion of the Court.

Women charged with murder, directions in this caſe.

III. *And be it further enacted by the authority aforeſaid,* That if the Grand Jury ſhall in the ſame indictment, charge any woman with the wilful murder of her infant baſtard child, as well as with either or both the offences aforeſaid, and it appear to the Jury of trials, that ſhe is guilty of the murder charged, ſhe ſhall be thereupon convicted of murder, and ſuffer the pains of death as in caſe of murder; but if it doth not appear to the ſame Jury that ſhe is guilty of the murder charged in the indictment, but only of either or both the offences firſt herein mentioned, then the ſame Jury may acquit her of the charge of murder, and find her guilty of the ſaid firſt mentioned offences, or either of them, as the caſe may be.

[This act paſſed *February* 26, 1785.]

An Act againſt Arſon, and other malicious Burning.

Burning dwelling-houſes by night, deemed felony.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any perſon, between ſun-ſetting and ſun-riſing, wilfully and maliciouſly ſhall burn the dwelling-houſe of another, or any out-building adjoining thereto, or any other building by means of which a dwelling-houſe ſhall be burnt, and be thereof convicted, ſuch offender ſhall be adjudged guilty of felony, and ſhall ſuffer the pains of death.

Puniſhment where the ſame is done between ſun-riſing and ſun-ſetting.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall wilfully and maliciouſly, between ſun-riſing and ſun-ſetting, burn the dwelling-houſe of another, or any out-building adjoining thereto, or any other building by means of which a dwelling-houſe ſhall be burnt; or that ſhall wilfully and maliciouſly, by night or by day, burn any barn, warehouſe, ſhop, mill, malt-houſe, out-houſe, any public building, or other building whatſoever, or any ſhip or other veſſel laying within the body of the county, and

be

be thereof convicted before the Juſtices of the Supreme Judicial Court, ſuch offender ſhall be ſentenced to hard labour for term of life or years, be ſet in the pillory at one or more times or places, not exceeding three, be whipped at one or more times or places, not exceeding four times, be impriſoned, bound to the good behaviour, or fined, or to any or all of theſe puniſhments, according to the nature and aggravation of the offence.

III. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall wilfully and maliciouſly burn any ſtacks of corn, hay, grain, ſtraw, corn-ſtalks, flax, fences, piles of wood, boards or other lumber, and be thereof convicted as aforeſaid, ſuch offender ſhall be ſentenced to be whipped, fined, ſtand in the pillory, to be confined to hard labour, and be bound to the good behaviour, or to all or any of them, according to the nature and aggravation of the offence.

Puniſhment for wilfully burning ſtacks of hay, corn, &c.

IV. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall wilfully and maliciouſly make a fire with deſign to communicate the ſame to the ſoil, graſs, trees, poles or under-bruſh of any other, or ſhall wilfully and maliciouſly ſuffer any fire ſo to communicate, as that by means thereof damage to the amount of *ten pounds*, ſhall be done to the owner or owners of the ſoil on which ſuch damage is done, and be thereof convicted as aforeſaid, he ſhall be ſentenced to be fined, impriſoned, confined to hard labour, or bound to the good behaviour, or to all or either of the ſaid puniſhments, according to the nature and aggravation of the offence.

Or for communicating fire to ſoil, graſs, &c.

[This act paſſed *March* 11, 1785.]

An Act againſt Acceſſaries to Crimes and felonious Aſſaulters.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any perſon ſhall aid, aſſiſt, abet, counſel, hire, command or procure any perſon to commit the crime of murder or rape, ſodomy, arſon, robbery or burglary, he is, and ſhall be conſidered as an acceſſary before the fact to the principal offender or offenders, and being thereof convicted, ſhall ſuffer the like puniſhment as is by law aſſigned for the crime to the commiſſion of which he ſhall be ſo acceſſary.

Puniſhment for aiding and aſſiſting perſons in committing murder, &c.

II. *And be it further enacted by the authority aforeſaid*, That whoſoever ſhall knowingly receive, harbour, conceal, maintain, aſſiſt, or relieve any perſon or perſons who have committed any of the crimes before-named, he is, and ſhall be conſidered as an acceſſary after the fact, and being convicted thereof, he ſhall be puniſhed by ſetting on the gallows the ſpace of one hour, with a rope about his neck, and the other end thereof thrown over the gallows, by fine, impriſonment, by ſetting in the pillory, by confinement to hard labour, and binding to the good behaviour, or to one or more of theſe puniſhments, according to the nature and aggravation of the offence.

Puniſhment for harbouring or concealing ſuch criminals.

Punishment for felonious assaulters.

III. *And be it further enacted by the authority aforesaid*, That whosoever shall make an assault with an intent to commit murder, rape or sodomy, and be thereof convicted, shall be sentenced to be set on the gallows, with a rope about his or her neck, and the other end thereof cast over the gallows, to be set in the pillory at one or more times or places, not exceeding three, to be whipped not exceeding thirty-nine stripes, be fined, suffer imprisonment, and binding to the good behaviour, or to any one or more of these punishments, according to the nature and aggravation of the offence.

[This act passed *March* 15, 1785.]

An Act providing a Place of Confinement for Thieves and other Convicts to hard Labour.

Preamble.

WHEREAS it has become necessary to the safety of the industrious inhabitants of the Commonwealth, to provide some place, other than common goals, for the reception and confinement to hard labour of persons convicted of larcenies, and other infamous crimes:

Place of confinement provided for convicts.

I. *Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That the island within the harbour of *Boston*, commonly called *Castle-Island*, shall be a place for the reception and secure confinement of all such persons as shall be sentenced to confinement and hard labour for the term of their natural lives, or for any shorter space of time, pursuant to any laws of this Commonwealth; and that when any person shall be sentenced to confinement and hard labour as aforesaid, by any Court of Justice within this Commonwealth, for any space of time, such person shall be sent to the said island, and be securely kept, and be under the discipline and command of the officers of the garrison there, in the same manner as if such convict was under voluntary inlistment to serve in the same garrison for the same space of time.

How disciplined

Persons sentenced to confinement, how conveyed.

II. *And be it enacted*, That whenever any person shall be sentenced to confinement as aforesaid, a warrant shall be made under the seal of the Court before whom the conviction shall be, signed by the Clerk thereof, and directed to some proper officer, to convey the said convicted person to the said island; and in all such cases, the expence thereof shall be borne by the Commonwealth, and paid out of the publick treasury; and the Governour, with the advice and consent of Council, is hereby authorized and empowered to make his warrant therefor.

Expence, how borne.

Officers of the garrison, their duty.

III. *And be it further enacted*, That the military commander and other officers of the same garrison shall receive all such convicts as shall be sent to them as aforesaid, and it shall be their duty to keep them securely, according to their best discretion.

IV. *And be it further enacted*, That if any of those convicts shall escape or attempt to escape from the said island, or shall be guilty of

of any mutiny or diſobedience of orders, the perſon ſo offending ſhall be liable to trial by court-martial, and beſides ſuffering confinement as aforeſaid double the time loſt by eſcape, ſhall be liable to the ſame puniſhment as is or ſhall be provided for the government of the troops ſtationed there.

Convicts eſcaping or attempting to eſcape, &c. how puniſhed.

V. *And be it further enacted*, That thoſe convicts ſhall not be allowed to watch, ward or perform any garriſon or military duty, ſave only fatigue work; ſhall not be allowed any ſpirituous liquors, ſave only in caſe of ſickneſs; ſhall be allowed only moderate and ordinary rations; and in caſe of neglecting or refuſing to perform ſuch reaſonable ſtint of hard labour as ſhall be aſſigned to them, they ſhall be abridged of thoſe rations until they have performed the ſame; and otherwiſe further corrected, according to the diſcretion of the three firſt commiſſioned officers preſent of the ſaid garriſon: *Provided as aforeſaid*, the puniſhment for the ſaid offence doth in no inſtance amount to the deprivation of life or member.

Their allowance.

In caſe of neglectinperforming ſtints, how corrected.

VI. *And be it further enacted*, That the ſaid commander and other officers of the ſaid garriſon, ſhall, at the expenſe of government, procure ſome ſuitable perſon, whom they may diſplace, and appoint another in his room as often as they think proper, to be a conſtant overſeer of thoſe convicts; and it ſhall be the duty of ſuch overſeer, during the time ſuch convicts are ſentenced to be confined there, to keep them to ſuch hard labour and ſervice as ſhall be ordered by the commander of the ſaid garriſon, for repairing and ſtrengthening the fortifications there, picking oakum, making nails, or to any hard labour that the General Court or the Governour and Council may hereafter order, for defraying the charge and expenſe of keeping and maintaining them in confinement as aforeſaid.

Commander and other officers to appoint an overſeer.

His duty.

VII. *And be it further enacted*, That the Commiſſary-General ſhall from time to time ſupply the ſaid overſeer with the materials, tools and implements neceſſary for employing thoſe convicts at their labour; and the ſaid overſeer ſhall keep a diſtinct and fair account of the ſame, with a fair account of all their earnings; and ſhall from time to time deliver to the ſaid Commiſſary the produce of thoſe materials, and once every year at leaſt, or oftener if required, render a full and perfect account of all the materials, tools and implements ſupplied, and the produce thereof, to the Commiſſary-General, who ſhall lay the ſame before the General Court for their allowance and approbation.

Commiſſary General to ſupply the overſeer with tools, &c.

And in order that the number and ſtate of the convicts confined as aforeſaid, may from time to time be fully known:

VIII. *Be it further enacted* That the commanding officer at the Caſtle ſhall keep a true and regular kalendar of the convicts ſentenced and committed to hard labour on the ſaid iſland as aforeſaid, the time of their commitment, by what Court committed, for what term of time, and at what time they are liberated or have eſcaped; and ſhall at the opening of the Supreme Judicial Court for the county of *Suffolk*, from time to time, make a true return in writing to the Juſtices of the ſame Court, of all the commitments, terms and liberations

Commanding officer to keep a true kalendar of the convicts.

liberations as above deſcribed, that have taken place ſince the laſt return, and of the convicts then in his cuſtody, on penalty of forfeiture of ſuch ſum as ſhall be ſet upon him by the ſaid Court, not exceeding the ſum of *thirty pounds*.

Officers or overſeer conniving at or permiting eſcapes.

IX. *And be it further enacted*, That if the commanding officer or other officer of that garriſon, or overſeer by them appointed, ſhall connive at, negligently or voluntarily ſuffer or permit any eſcape of any of thoſe convicts from their confinement, during the term they are ſentenced to hard labour, and be thereof convicted at the Supreme Judicial Court, he ſhall be adjudged incapable of ſuſtaining any office under this government, and be fined not exceeding *one hundred pounds*, and be impriſoned not exceeding twelve months, all or any of thoſe puniſhments, according to the nature and aggravation of his offence.

Penalty.

Noncommiſſioned officers or privates conniving at eſcapes.

X. *And be it further enacted*, That if any non-commiſſioned officer or private ſoldier ſhall connive at, negligently or voluntarily ſuffer or permit any eſcape of any of thoſe convicts from their confinement, during the term they are ſentenced to hard labour, he ſhall ſuffer ſuch puniſhment as is provided in caſe of deſertion, according to the diſcretion of the court-martial before whom he ſhall be tried.

Puniſhment.

Iſſuing Commiſſary to allow one ration per day.

XI. *And be it further enacted*, That the iſſuing Commiſſary at the ſaid garriſon ſhall deliver over to the ſaid overſeer one ration a day for each of thoſe convicts. *And further*, that any perſon who ſhall take up any of thoſe convicts who ſhall eſcape before their term is expired, from that garriſon, and return him or them to the commanding officer thereof, ſhall receive reaſonable pay for all his time and expenſes, and alſo a bounty of *forty ſhillings*, by warrant from the Governour, with advice of Council, on the Treaſurer of this Commonwealth.

Perſons taking up convicts who eſcape,

Bounty.

And to the end ſuch convicts may be fully known, and to prevent any perſon from purchaſing their clothing:

Convicts, how clothed.

XII. *Be it further enacted*, That each of thoſe convicts who ſhall be ſentenced to ſuch confinement for twelve months, or more, before he is carried on to the ſaid iſland, ſhall receive of the Commiſſary-General, a coat, jacket, and breeches, as a badge of infamy, in lieu of his old ones, and as often thereafter as it ſhall be judged neceſſary by the commander of the garriſon, each of which ſhall be made half of cloth of one colour, and the other half of cloth of a diſtinct different colour: and the ſaid convict ſhall not be allowed to wear any other coat, jacket or breeches, during the term of his confinement there; and at the expiration of the ſaid term, where ſuch confinement is for twelve months, or any term of years, he ſhall leave the clothing received as aforeſaid, with the Commiſſary-General, who ſhall return to him his former clothing again.

Puniſhment for exchanging, deſtroying or diſpoſing of clothing.

XIII. *And be it further enacted*, That if any convict ſhall at any time exchange the clothing received as aforeſaid, or ſhall deſtroy or diſpoſe of the ſame, he ſhall be liable to ſuch corporal puniſhment as the ſaid commander ſhall order, not extending to life or member; and if any perſon ſhall buy or receive of any ſuch convict his ſaid clothing, or any part thereof, and be thereof convicted in the

Supreme

Supreme Judicial Court, or Court of General Seſſions of the Peace, ſuch offender ſhall be ſentenced to pay a fine of *ten pounds*, and if he or ſhe ſhall be unable to pay the ſame, ſuch perſon ſhall be ſentenced to hard labour on the ſame iſland, for a ſpace of time not exceeding ſix months, and ſhall be liable to all the puniſhments and diſcipline as the perſon was from whom he ſhall receive the ſame.

Perſons convicted of aſſiſting convicts to eſcape.

XIV. *And be it further enacted*, That if any perſon ſhall aſſiſt any ſuch convict to eſcape from the ſaid iſland, or ſhall harbour, conceal or receive any ſuch convict, or yield him any comfort or aſſiſtance, knowing him to be ſuch, the perſon ſo offending being thereof duly convicted in either of the Courts aforeſaid, ſhall, at the diſcretion of the Court before whom the conviction may be, pay a fine not exceeding the ſum of *fifty pounds*; and if he or ſhe ſhall be unable to pay the ſaid fine, ſuch perſon ſhall be ſentenced to ſerve on the ſaid iſland in manner aforeſaid, and under the regulations and diſcipline of the garriſon, as before mentioned.

Puniſhment.

No females to be ſentenced to confinement in the garriſon, until, &c.

XV. *Provided always, and be it enacted by the authority aforeſaid*, That no female ſhall be ſentenced to confinement in the garriſon aforeſaid, until ſome meet and ſuitable place ſhall be provided, to keep them ſeparate from the male convicts to be there confined, until which time all females convicted of any of the offences for which confinement ſhall be directed as the puniſhment, in whole or in part, the Court before whom the conviction may be, ſhall ſubſtitute ſuch other corporal or infamous puniſhment as ſhall in their opinion appear juſt and reaſonable, according to the nature and aggravation of the offences: *Provided*, That no puniſhments ſhall be inflicted but ſuch as have been known and accuſtomed at common law.

[This act paſſed *March* 14, 1785.]

An Act for taking away the Benefit of Clergy in all Caſes whatſoever, and directing adequate Puniſhment for the Crimes where the ſame uſed to be allowed.

Preamble.

WHEREAS the plea of benefit of clergy, though it was originally founded in ſuperſtition and injuſtice, yet by long uſuage and the humanity of criminal law, is ſo interwoven with it, as to become very eſſential in its preſent ſyſtem; but foraſmuch as the operation of it conſiſts only in the mitigation of the puniſhment for thoſe crimes where it is allowed, which in moſt caſes operates very inadequately and diſproportionately, and for which more adequate remedies may be provided:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That from and after the publication of this law, the plea of benefit of clergy ſhall not be uſed or allowed in any cauſe whatſoever, unleſs in

the proſecution for crimes committed before the paſſing this act, for which the ſaid plea of benefit of clergy would have then been allowed.

Puniſhment for crimes where the ſame uſed to be allowed.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall be convicted of any crime wherein by law the plea of benefit of clergy was heretofore allowed, and for which, without ſuch benefit of clergy, he muſt have been adjudged to ſuffer the pains of death, ſuch perſon ſhall be ſet upon the gallows for the ſpace of one hour, with a rope about his neck, and the other end thereof caſt over the gallows, pay a fine, not exceeding *five hundred pounds*, be whipped, not exceeding thirty-nine ſtripes, and be bound to the good behaviour, or ſuffer one or more of the above puniſhments, according to the aggravation of the offence; and ſo often as he ſhall be convicted of the ſame crime, ſhall ſuffer the puniſhments above-mentioned, or any one or more of them, unleſs ſome other puniſhment ſhall be, or may have been by the laws of this Commonwealth aſſigned for ſuch crime, in which caſe the offender ſhall ſuffer as by ſuch law is or ſhall be directed.

[This act paſſed *March* 11, 1785.]

An Act againſt Blaſphemy.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That if

Perſons convicted of blaſphemy.

any perſon ſhall wilfully blaſpheme the holy name of GOD, by denying, curſing, or contumelioufly reproaching GOD, his creation, government, or final judging of the world, or by curſing, or reproaching JESUS CHRIST, or the HOLY GHOST, or by curſing or contumelioufly reproaching the holy word of GOD, that is, the canonical ſcriptures, contained in the books of the Old and New-Teſtaments, or by expoſing them, or any part of them, to contempt and ridicule; which books are as follows, *Geneſis, Exodus, Leviticus, Numbers, Deuteronomy, Joſhua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Eſther, Job, Pſalms, Proverbs, Eccleſiaſtes, the Song of Solomon, Iſaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hoſea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zachariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galations, Epheſians, Philipians, Coloſſions Theſſalonians, Theſſalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelations,* every perſon

How puniſhed.

ſo offending, ſhall be puniſhed by impriſonment, not exceeding twelve months, by ſitting in the pillory, by whipping, or by ſitting on the gallows, with a rope about the neck, or binding to the good behaviour, at the diſcretion of the Supreme Judicial Court before whom the conviction may be, according to the aggravation of the offence.

[This act paſſed *July* 3, 1782.]

An Act to prevent Profane Curſing and Swearing.

WHEREAS the horrible practice of profane curſing and ſwearing, is inconſiſtent with the dignity and rational cultivation of the human mind, with a due reverence of the Supreme Being and his Providence, and hath a natural tendency to weaken the ſolemnity and obligation of oaths lawfully taken in the adminiſtration of juſtice; and to promote falſhood, perjuries, blaſphemies and diſſoluteneſs of manners; and to looſen the bands of civil ſociety: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That if any perſon or perſons, who have arrived at diſcretion, in the judgment of the Juſtice before whom the conviction may be, ſhall profanely curſe or ſwear in the hearing of any Juſtice of the Peace, or being charged therewith, ſhall confeſs ſuch offence, or be otherwiſe convicted thereof on the oath of any ſheriff, deputy-ſheriff, coroner, conſtable, grand-juror or tything-man, where ſuch evidence ſhall be ſatisfactory to the Juſtice that ſhall take cognizance of the offence; or on the oath of any one or more witneſs or witneſſes, where the evidence ſhall be ſatisfactory as aforeſaid, every perſon ſo offending, ſhall forfeit and pay (for the uſe of the poor of the town where ſuch offence is committed) a ſum not exceeding *eight ſhillings*, nor leſs than *four*, according to the aggravations of the offence, and the quality and circumſtances of the offender, in the judgment of the Juſtice or Court before whom the conviction may be; and in caſe the ſame perſon or perſons ſhall, after conviction, offend a ſecond time, ſuch offender or offenders ſhall forfeit and pay double, and if a third time, treble, the ſum forfeited on the firſt conviction, and the like ſum on every conviction afterwards: And if on any trial and conviction, proofs ſhall be made that more than one profane oath or curſe were uttered by the ſame perſon, at the ſame time, and in the preſence or hearing of the ſame witneſs or witneſſes, the perſon ſo offending, for every profane oath or curſe ſo uttered after the firſt, ſhall forfeit and pay a ſum not under *one ſhilling*, nor exceeding *two ſhillings*. And in caſe any perſon convicted of profane curſing or ſwearing, ſhall not immediately pay the ſum or ſums ſo forfeited, he ſhall be committed to the common goal or houſe of correction, there to remain not exceeding ten days nor leſs than five days.

Perſons convicted of profane curſing and ſwearing.

Penalty.

In caſe—

Perſons convicted in caſe of non-payment to committed.

II. *And be it further enacted by the authority aforeſaid,* That when any profane oath or curſe ſhall be uttered by any perſon or perſons, in the hearing of any Juſtice of the Peace, it ſhall be the duty of ſuch Juſtice to take cognizance of ſuch offence, and puniſh the offender in the ſame manner as though ſuch offender had been convicted before the ſaid Juſtice by other evidence.

Profane oaths uttered in the hearing of any Juſtice of the Peace—

Juſtices Duty.

III. *And be it further enacted,* That if any perſon or perſons ſhall profanely ſwear or curſe in the hearing of any ſheriff, deputy-ſheriff, or conſtable, they and each of them are hereby authorized and required to apprehend and ſecure ſuch offender or offenders being unknown to them, and to require ſuitable aid therein; and him

Sheriffs, Deputy Sheriffs, and Conſtables, authoriſed to apprehend offenders.

him or them forthwith to carry before ſome Juſtice of the Peace for the ſame county, that ſo ſuch offender or offenders may be convicted and puniſhed for the ſaid offence: And in caſe any perſon profanely ſwearing or curſing in the hearing of any ſheriff, deputy-ſheriff, coroner, conſtable, grand-juror or tything-man, ſhall be known to any or either of them, ſuch ſheriff, under-ſheriff, coroner, conſtable, grand-juror or tything man, ſhall and is hereby required forthwith to give information thereof to ſome Juſtice of the Peace of the ſame county, in order that the offender or offenders may be convicted and puniſhed for the ſame, in the manner and form as in and by this act is directed.

In caſe—

IV. *And be it further enacted*, That every Juſtice of the Peace, hearing any perſon or perſons utter any profane oath or curſe, or before whom any perſon or perſons ſhall be convicted of profane curſing or ſwearing, by other evidence, ſhall cauſe the conviction to be drawn up in the form following.

Juſtices of the Peace hearing perſons curſing and ſwearing, to cauſe conviction.

——— ſſ. Be it remembered, That on the day of in the year of our Lord *A. B.* was convicted before me, one of the Juſtices of the Peace for the county of of ſwearing one (or more) profane oath, (or oaths,) or of uttering one (or more) profane curſe (or curſes,) as the caſe ſhall be.

Form.

Given under my hand and ſeal the day and year aforeſaid.

Which ſaid form and conviction ſhall be deemed and taken to be final to all intents and purpoſes, (ſaving as herein is after expreſſed;) and the ſaid Juſtice before whom ſuch conviction ſhall be, ſhall cauſe the ſame to be fairly written and returned to the then next Court of General Seſſions of the Peace, for the county where the offence is committed, there to be read in open Court, and to be filed by the Clerk of the Peace, and remain and be kept amongſt the records of the ſaid Court. *Saving always, and it is hereby provided and enacted*, That when any perſon who ſhall be convicted before a Juſtice of the Peace of profane curſing or ſwearing, ſhall have confeſſed the words alledged to have been uttered, and ſhall have pleaded ſpecially that the words ſpoken do not amount to or import a proof of an oath or curſe within the meaning and intention of this act; in ſuch caſe it ſhall and may be lawful for ſuch defendant to appeal from the ſentence of the Juſtice before whom he was convicted, to the Juſtices of the ſame county, in their next General Seſſions of the Peace, who ſhall hear and finally determine the ſame; the appellant claiming his appeal at the time of declaring the ſaid ſentence, and recognizing with ſureties, in a reaſonable ſum, not exceeding *five pounds*, to proſecute his appeal with effect, and to perform the order of the ſaid Court thereon.

Said form to be deemed final.

Returnable to the next Court of General Seſſions.

Perſons confeſſing and pleading ſpecially.

In ſuch caſes.

V. *And be it further enacted*, That if any conſtable, grand-juror, tything-man or other officer enjoined by this act to inform againſt the violaters of it, ſhall wittingly and willingly omit the performance of his duty in the execution of this act, and be thereof duly convicted before any Juſtice of the Peace for the county where

Officers enjoined by this act, omitting their duty.

ſuch

ſuch offence is committed, he ſhall forfeit and pay the ſum of *forty ſhillings*, to be levied and recovered by diſtreſs and ſale of the offenders goods and chattles, by virtue of a warrant under the hand and ſeal of ſuch Juſtice; to be diſpoſed of, one moiety thereof to the informer, the other moiety to the uſe of the poor of the town where the offence is committed: And in caſe ſuch offender ſhall not have ſufficient goods and chattles whereon to levy the ſaid penalty, it ſhall and may be lawful for ſuch Juſtice of the Peace to commit the offender to goal for the ſpace of ſix days, there to remain without bail or mainprize; the proſecution to be commenced within ſixty days. Penalty. And in caſe.

VI. *And be it further enacted*, That if any perſon being required to give aid to any ſheriff, deputy-ſheriff, or conſtable, as by this act is provided, ſhall neglect or refuſe the ſame, and be thereof convicted before any Juſtice of the Peace by the oath of any ſuch ſheriff, deputy-ſheriff, or conſtable, or other legal witneſs or witneſſes, to the ſatisfaction of ſuch Juſtice, ſuch perſon ſo refuſing, ſhall forfeit and pay the ſum of *forty ſhillings*; the one half to the informer, and the other half to the poor of the town where the offence is committed: And every perſon giving aid as before is provided in this act, ſhall receive the ſame allowance therefor as is by law made to witneſſes in civil cauſes. Perſons required to give aid who ſhall neglect. Penalty.

VII. *Provided always, and it is hereby enacted*, That no perſon ſhall be proſecuted or troubled for the offence of profane curſing or ſwearing upon this law, unleſs the ſame be proved or proſecuted within twenty days next after the offence is committed. Proviſo.

And that no perſon may pretend ignorance of this law, but that it may be generally known.

VIII. *Be it further enacted*, That a printed copy of this act ſhall be tranſmitted to every miniſter within the government, to whom it is hereby recommended to read or cauſe the ſame to be publickly read before their ſeveral congregations, on the Lord's day, next ſucceeding the choice of town officers yearly. This act to be tranſmitted to miniſters.

IX. *And be it further enacted*, That the Juſtices of the Supreme Judicial Court and the Juſtices of the Peace for the ſeveral counties, at their General Seſſions, ſhall cauſe this act to be publickly read at the opening of their reſpective Courts, from time to time.

X. *And be it further enacted*, That all laws heretofore made for preventing profane curſing and ſwearing, be, and hereby are repealed.

[This act paſſed *October* 19, 1782.]

An Act for making more effectual Proviſion for the due Obſervation of the Lord's Day; and for repealing the ſeveral Laws heretofore made for that Purpoſe.

Preamble.

WHEREAS the obſervance of the Lord's Day is highly promotive of the welfare of a community, by affording neceſſary ſeaſons for relaxation from labour and the cares of buſineſs; for moral reflections and converſation on the duties of life, and the frequent errors of human conduct; for publick and private worſhip of the Maker, Governour and Judge of the world, and for thoſe acts of charity which ſupport and adorn a Chriſtian ſociety: And whereas many thoughtleſs and irreligious perſons, inattentive to the duties and benefits of the Lord's Day, profane the ſame by unneceſſarily purſuing their worldly buſineſs and recreations on that day, to their own great damage, as members of a Chriſtian ſociety, and to the great diſturbance of well diſpoſed perſons; and to the great damage of the community, by producing diſſipation of manners and immoralities of life:

Buſineſs and diverſions prohibited on the Lord's Day.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That no perſon or perſons whatſoever ſhall keep open his or their ſhop, ware-houſe or work-houſe, nor ſhall upon land or water do any manner of labour, buſineſs or work, nor be preſent at any concert of muſick, dancing or any publick diverſion, ſhew or entertainment, nor uſe any ſport, game, play or recreation on the Lord's Day, or any part thereof (works of neceſſity and charity only excepted) upon penalty that every perſon ſo offending, ſhall forfeit and pay a

Penalty.

ſum not exceeding *twenty ſhillings* nor leſs than *ten ſhillings*.

Travelling prohibited.

II. *Be it further enacted by the authority aforeſaid,* That no traveller, drover, waggoner, teamſter or any of their ſervants, ſhall travel on the Lord's Day or any part thereof (except from neceſſity

Penalty.

or charity) upon the penalty of a ſum not exceeding *twenty ſhillings* nor leſs than *ten ſhillings*.

Unneceſſary walking forbidden.

III. *And be it further enacted,* That no perſon ſhall recreate, diſport or unneceſſarily walk or loiter, or aſſemble themſelves in the ſtreets, lanes, wharves, highways, common fields, paſtures or orchards of any town or place within this State, on the ſaid day, or any part thereof, on penalty of the ſum of *five ſhillings*.

Funerals regulated.

IV. *And be it further enacted,* That no ſexton, grave digger, porter or bearer, ſhall be aſſiſting at the funeral of any perſon on the Lord's Day, or any part thereof; and no perſon ſhall toll any bell for ſuch funeral, unleſs licence be given by a Juſtice of the Peace; and when in any town or diſtrict where no Juſtice of the Peace dwells, ſuch licence ſhall be granted by one or more of the ſelectmen of the town or diſtrict, on penalty of *twenty ſhillings*, to be paid by each and every perſon ſo offending; and no Juſtice or ſelectman ſhall grant any licence except in caſes of neceſſity only.

V. *Be it further enacted,* That no vintner, retailer of ſtrong liquors, innholder, or other perſon keeping a houſe of publick entertainment,

tertainment, ſhall entertain or ſuffer any of the inhabitants of the reſpective towns where they dwell, or others, not being travellers, ſtrangers or lodgers, in ſuch houſes, to abide and remain in their houſes, yards, orchards or fields, drinking or ſpending their time either idly or at play, or doing any ſecular buſineſs on the Lord's Day, or any part thereof, on penalty of *ten ſhillings*, payable by ſuch vintner, retailer or innholder, or perſon keeping ſuch houſe of entertainment, for each perſon ſo entertained or ſuffered; and every perſon ſo drinking or abiding (except as aforeſaid) ſhall forfeit a ſum not exceeding *ten ſhillings*, nor leſs than *five ſhillings*; and every ſuch licenced perſon upon any conviction, after the firſt, ſhall forfeit *twenty ſhillings*, and having been three times convicted, ſhall be debarred renewing ſuch his licence forever after. Entertainment in publick houſes prohibited.

And although it is the ſenſe of this Court that the time commanded in the ſacred ſcriptures to be obſerved as holy time, includes a natural day or twenty-four hours: Yet, whereas there is a difference of opinion concerning the beginning and ending of the Lord's Day, among the good people of this Commonwealth, and this Court being unwilling to lay any reſtrictions, which may ſeem unneceſſary or unreaſonable to perſons of ſobriety and conſcience: Preamble.

VI. *Be it therefore enacted by the authority aforeſaid*, That all the above regulations reſpecting the due obſervation of the Lord's Day, extend to the time included between the midnight preceding, and the ſun ſitting the ſame day. Time fixed for the due obſervation of the Lord's Day.

VII. *Be it enacted by the authority aforeſaid*, That no perſon ſhall be preſent at any concert of muſick, dancing or other publick diverſion, nor ſhall any perſon or perſons uſe any game, ſport, play or recreation on the land or water on the evening next preceding or ſucceeding the Lord's Day, on pain of forfeiting *ten ſhillings* for each offence. And no retailer, innholder or perſon licenced to keep a publick houſe, ſhall entertain or ſuffer to remain or be in their houſes or yards, or other places appurtenant, any perſon or perſons (travellers, ſtrangers or lodgers excepted) drinking or ſpending their time on the ſaid evenings, on penalty of *ten ſhillings* for each offence. Diverſions prohibited. Retailers, &c. not to entertain perſons excepting travellers, &c.

And whereas the publick worſhip of Almighty God is eſteemed by Chriſtians an eſſential part of the due obſervance of the Lord's Day, and requires the greateſt decency and reverence for a due performance of the ſame: Preamble.

VIII. *Be it therefore enacted*, That each perſon being able of body, and not otherwiſe neceſſarily prevented, who ſhall for the ſpace of one month together, abſent him or herſelf from the publick worſhip of God on the Lord's Day, ſhall forfeit and pay the ſum of *ten ſhillings*, provided there be any place of worſhip on which they can conſcientiouſly and conveniently attend. Abſence from publick worſhip

IX. *Be it further enacted by the authority aforeſaid*, That if any perſon ſhall on the Lord's Day, within the walls of any houſe of publick worſhip, behave rudely or indecently, he or ſhe ſhall pay a fine not more than *forty ſhillings*, nor leſs than *five ſhillings*. And if the perſon ſo offending be a ſervant or perſon under age, and their parents, Perſons behaving rudely in houſes of publick worſhip. Penalty.

parents, maſters, or guardians, refuſe to pay the fine, ſuch ſervant or perſon under age, ſhall be puniſhed by impriſonment, not exceeding ten days, nor leſs than three days, at the diſcretion of the Juſtice or Court before whom ſuch perſon or perſons ſhall be convicted.

Perſons interrupting the publick worſhip of God.

X. *And be it enacted by the authority aforeſaid,* That if any perſon or perſons either on the Lord's Day, or at any other time, ſhall wilfully interrupt or diſturb any aſſembly of people met for the publick worſhip of God, within the place of their aſſembling, or out of it, he or they ſhall ſeverally pay a fine not exceeding *ten pounds*, nor leſs than *twenty ſhillings*.

Penalty.

Perſons not to ſerve any civil proceſs.

XI. *Be it further enacted by the authority aforeſaid,* That no perſon ſhall ſerve or execute any civil proceſs from midnight preceding to midnight following the Lord's Day, but the ſervice thereof ſhall be void, and the perſon ſerving the ſame ſhall be as liable to anſwer damages to the party aggrieved as if he had done the ſame without any ſuch civil proceſs.

And in order to the more effectually carrying this act into execution:

Wardens to be appointed.

XII. *Be it further enacted,* That each town and diſtrict within this Commonwealth, ſhall at the time of chooſing town and diſtrict officers, annually and every year chooſe certain perſons, being of good ſubſtance, and ſober life and converſation, to be wardens of ſuch town or diſtrict; of which officers the town of *Boſton* ſhall chooſe twelve, *viz.* one for each ward in ſaid town; and every other town or diſtrict ſhall chooſe any number not leſs than two and not exceeding ſix; and all ſuch wardens ſhall take the following oath, *viz.*

Form of the oath.

YOU being choſen a warden for the town of for the year enſuing, and until another ſhall be choſen in your room, do ſolemnly ſwear, that you will diligently attend to, and faithfully execute the duties of the ſaid office without partiality, and according to your beſt diſcretion and judgment. *So help you GOD.*

Penalty for not ſerving.

And if any perſon or perſons ſhall refuſe or neglect to take ſuch oath, and to ſerve in ſuch office, every ſuch perſon in the town of *Boſton*, ſhall be liable to the penalty of *ten pounds*; and in any other town or diſtrict, to the penalty of *five pounds*. And every town ſhall forthwith proceed to the choice of other or others, in the room of any perſon or perſons ſo refuſing or neglecting, and ſo *toties quoties*. And if any perſon or perſons, ſo refuſing or neglecting, ſhall not pay to the treaſurer of ſuch town the fine or penalty aforeſaid, he ſhall as ſoon as may be, be ſummoned to appear before the Court of Seſſions for the county; and upon certificate under the hand of the town clerk, that ſuch perſon was legally choſen to the office of warden, unleſs ſome juſt cauſe ſhall be made to appear to the ſaid Court of Seſſions, to excuſe the perſon ſo choſen from ſerving, the Juſtices ſhall order a warrant to be ſigned by the Clerk of the Peace, directed to any conſtable or conſtables of ſuch town, to levy the ſaid fine by diſtreſs and ſale of ſuch offender's goods, returning the overplus, if any there be: And the fine or penalty ſo levied

levied or paid, ſhall be delivered to the overſeers of the poor or ſelectmen, for the uſe of the poor of ſuch town: And if the town of *Boſton* ſhall neglect the due obſervance of this act, and ſhall not chooſe, in manner as required, ſuch officers, the ſaid town ſhall incur the penalty of *one hundred pounds*; and any other town ſo neglecting ſhall incur the penalty of *fifty pounds*, upon every conviction of ſuch neglect before the Court of Seſſions for the county wherein ſuch town ſhall be, to be levied by warrant from the ſaid Court in proportion upon the inhabitants, as publick charges are levied, to be paid into the county treaſury. Penalty on towns not chooſing.

XV. *And be it further enacted*, That the perſons ſo choſen and ſerving as wardens ſhall be held and obliged to enquire into, obſerve and inform of all offences againſt this act; and every ſuch warden is hereby authorized and empowered to enter into any of the rooms and other parts of any inn or publick houſe of entertainment on the Lord's Day, and the evening preceding and ſucceeding; and if ſuch entrance ſhall be refuſed to any warden, the landlord or licenced perſon ſhall forfeit the ſum of *forty ſhillings* for each and every offence. Warden's duty.

And the ſaid wardens are hereby further authorized and empowered within their reſpective towns, to examine all perſons ſuſpected as unneceſſarily travelling as aforeſaid, on the Lord's Day, and to demand of all ſuch perſons the cauſe thereof, together with their names and places of abode: And if ſuch perſons ſhall refuſe to make anſwer to ſuch demands, or ſhall not give to ſuch warden or wardens, ſuch reaſons for their travelling upon the Lord's Day, as ſhall ſatisfy ſuch wardens of the neceſſity thereof, ſuch wardens ſhall return the names of all ſuch perſons as they ſhall know or can obtain the name of, to a Juſtice of the Peace; and ſuch Juſtice ſhall proceed to trial of the offence, if the offender ſhall be within the county, or otherwiſe ſuch warden ſhall return the names of ſuch perſons, and the offence, to the grand jury, for their conſideration and proceeding thereon. And if any perſon ſhall wilfully give falſe anſwer to any ſuch demands of any wardens, every perſon ſo offending, ſhall forfeit *five pounds* for each and every offence: And any two Juſtices of the Peace, *quorum unus*, for any county where ſuch perſon ſhall be found, ſhall have full power and authority to enquire into, try and determine ſuch offence.

XVI. *And be it further enacted*, That it ſhall be lawful for each and every warden and wardens, that have already been choſen, or that may hereafter be choſen in conſequence of this act, either by himſelf or with ſuch aſſiſtance as he ſhall judge needful to take or call to his aid, forcibly to ſtop and detain any perſon or perſons he ſhall ſuſpect of unneceſſarily travelling as aforeſaid, for and during ſuch ſpace of time as ſhall be neceſſary for demanding the cauſe or reaſon of ſuch perſon's travelling, his name and place of abode, and receiving the anſwers to ſuch demands: And in caſe any perſon or perſons ſhall not give ſatisfaction to the warden or wardens demanding the ſame, ſuch warden or wardens ſhall have full power and authority to detain in his or their cuſtody ſuch perſon or perſons, un-

til a regular trial may be had, unleſs ſuch warden or wardens ſhall receive ſatisfaction before the time of trial. And every perſon examined by any warden or wardens in conſequence of this act, that ſhall refuſe or neglect to give direct anſwers, ſhall, on conviction of ſuch his refuſal or neglect, forfeit and pay the ſum of *five pounds*, and may be proſecuted and tried in the ſame manner as is already provided in this act for giving a falſe anſwer: And every perſon who ſhall be required to aſſiſt and give aid to any warden, that ſhall refuſe or neglect ſo to do, ſhall for every ſuch offence, forfeit and pay the ſum of *forty ſhillings*; unleſs ſuch perſon or perſons ſo refuſing or neglecting ſhall make reaſonable excuſes to the acceptance of the Court or Juſtice before whom they ſhall be tried.

Penalty.

Oath of any warden deemed ſufficient evidence in any trial.

XVII. *And be it further enacted*, That the oath of any warden ſhall be deemed full and ſufficient evidence in any trial for any offence againſt this act, unleſs in the judgment of the Court or Juſtice, the ſame ſhall be invalidated by other evidence that may be produced.

Privilege of wardens.

XVIII. *And be it further enacted*, That no perſon exempt from ſerving as a grand-juryman ſhall be liable to any penalty for not ſerving as warden; any thing in this act to the contrary notwithſtanding: And no perſon ſhall be held and obliged to ſerve in the ſaid office of warden more than once in five years; and every warden, when in the execution of his office, ſhall carry with him a white wand, not leſs than ſeven feet in length, as a badge of his office, and may command aſſiſtance when he ſhall judge it neceſſary; and any perſon refuſing or neglecting to be ſo aiding and aſſiſting, ſhall forfeit and pay the ſum of *forty ſhillings*.

Parents and guardians liable for fines.

XIX. *And be it further enacted*, That the parents of any children under age, and the guardians of any minors, and the maſters of ſervants, who ſhall have no parents nor guardians, ſhall be reſpectively liable for the fines of their children, wards or ſervants, who ſhall be convicted of any offence againſt this act.

Perſons not paying fines ſubject to impriſonment.

XX. *And be it further enacted*, That in caſe any perſon that ſhall be convicted of profaning the Lord's Day in any of the inſtances mentioned in this act, ſhall not immediately pay the ſum or ſums by him forfeited as aforeſaid, he ſhall be puniſhed by being committed to the common goal of the county, there to remain not exceeding ten days, nor leſs than five days.

Other civil officers to take notice of breaches of this act.

XXI. *And be it further enacted*, That notwithſtanding the ſpecial proviſion made by this act for preventing the breaches thereof, any Juſtice of the Peace ſhall upon inſpection, convict any perſon; and ſuch ſpecial proviſion ſhall not be conſtrued or underſtood to exempt any ſheriffs, grand-jurors, tythingmen, conſtables or other officers, or perſons whatſoever, from any obligation or duty, to cauſe this act to be put in execution, but they ſhall be held to take due notice and proſecute all breaches thereof, ſuch ſpecial proviſion notwithſtanding.

Offences to be heard before Juſtices of the Peace.

XXII. *And be it further enacted*, That all offences againſt this act may be heard and determined before any of the Juſtices of the Peace in their reſpective counties where the fine does not exceed the ſum

of

of *forty ſhillings*. All fines and forfeitures ariſing by this act, not therein otherwiſe diſpoſed of, ſhall be applied towards the ſupport of the poor in the town where the offence ſhall be committed. Fines how to be applied.

XXIII. *Be it further enacted by the authority aforeſaid*, That ſuch towns as have neglected to chuſe wardens in the month of *March* laſt, and have thereby incurred a penalty, be, and hereby are exempted from ſuch penalty, provided ſuch towns chooſe them on or before the month of *January* next, which choice they are hereby empowered to make. Towns exempted who have neglected to chooſe wardens. Proviſo.

XXIV. *And be it further enacted by the authority aforeſaid*, That this act ſhall be publickly read by the Clerk of the Peace, at the opening of each Court of General Seſſions of the Peace within this State, and by each Town-Clerk annually, at the yearly meeting in the month of *March*. Act to be read at *March* meeting annually.

XXV. *And be it further enacted by the authority aforeſaid*, That all laws heretofore made, ſo far as they relate to the due obſervation of the Lord's Day, be, and hereby are repealed and declared null and void. Other laws reſpecting the Lord's Day, repealed.

[This act paſſed *October* 22, 1782.]

An Act againſt Adultery, Polygamy and Lewdneſs.

WHEREAS chaſtity of behaviour, and the due obſervance of the marriage covenant, are highly conducive to the peace, good order and welfare of the community, and the violation of them productive of great evils to individuals and the publick: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any man or woman ſhall commit adultery, and be thereof convicted, every perſon ſo convicted ſhall be ſet upon the gallows with a rope about his or her neck, and the other end of it caſt over the gallows, for the ſpace of one hour, be publickly whipped, not exceeding thirty-nine ſtripes, be impriſoned or fined, and bound to the good behaviour; all or any of theſe puniſhments, according to the aggravation of the offence. Puniſhment for adultery,

II. *And be it further enacted by the authority aforeſaid*, That if any perſon within this Commonwealth being married, or who hereafter ſhall marry, ſhall marry any perſon, the former huſband or wife being alive, or who ſhall continue to live ſo married, and being thereof convicted, ſhall be ſentenced to be ſet on the gallows for the ſpace of one hour, with a rope about his or her neck, and the other end thereof caſt over the gallows, be publickly whipped not exceeding thirty ſtripes, be impriſoned, fined and bound to the good behaviour; all or any of theſe puniſhments, according to the aggravation of the offence; and the party or parties ſo offending, may receive ſuch and the like proceeding, trial and execution in ſuch county where ſuch perſon or perſons ſhall be apprehended, as if the offence had been committed in the ſame county. Puniſhment for polygamy.

III.

Not to extend where husband or wife shall be absent 7 years.

Provided always, That this act or any thing therein contained, shall not extend to any person whose husband or wife shall be continually remaining beyond sea by the space of seven years together, or whose husband or wife shall absent him or herself the one from the other, by the space of seven years together; the one of them, in either case, not knowing the other to be living within that time.

Proviso.

Provided also, That this act or any thing therein contained, shall not extend to the wife of any married man who shall willingly absent himself from his said wife, by the space of seven years together, without making suitable provision for her support and maintenance in the mean time, if it shall be in his power so to do.

Or to persons divorced, or married within the age of consent.

Provided also, That this act, or any thing therein contained, shall not extend to any person that is or shall be at the time of such marriage divorced, by sentence of any Court whatsoever, which has or may have legal jurisdiction for that purpose, unless such person is the guilty cause of such divorce; nor to any person for or by reason of any former marriage had or made, or hereafter to be had or made within the age of consent.

Punishment for lewd and lascivious behaviour.

III. *And be it further enacted by the authority aforesaid,* That if any man and woman, either or both of whom being then married, shall lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, shall be guilty of open gross lewdness and lascivious behaviour, and being thereof convicted before the Justices of the Supreme Judicial Court, shall be punished by setting in the pillory, whipping, fining, imprisonment and binding to the good behaviour; all or any of these punishments according to the aggravation of the offence.

[This act passed *February* 17, 1785.]

An Act for the punishing and preventing of Larcenies.

Punishment for theft.

BE *it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same,* That whoever shall feloniously steal any money, goods or chattles, any note of the Treasurer of this Commonwealth for the payment of money, any note or certificate of any bank or any publick office, securing the payment of money, to any person, or certifying that the same is due, any order entitling any person to money, any bill of exchange, bond, obligation, warrant, bill, or promisory note of hand for the payment of money or any valuable property, any record or process belonging to any Court of Justice, or to any publick office, any book of account, receipts of money, or other article paid or delivered, adjustments and documents of any kind relating to the payment of money or other article, any indenture of apprenticeship, deed, covenant, indenture or assurance respecting any property, real or personal, and be thereof convicted, every such offender shall be punished by fine or whipping, in the discretion of the Court before whom the same shall be tried, not exceeding the sum of *one hundred pounds,* or thirty-nine stripes.

II.

II. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall be convicted of feloniouſly ſtealing any of the before-mentioned articles from the perſon of another, whether privily and without his knowledge, or openly and avowedly before his face, he ſhall be deemed guilty of an higher ſpecies of larceny, and ſhall be puniſhed by whipping, as aforeſaid, or by fine, not exceeding *one hundred and fifty pounds*, at the diſcretion of the Court before whom the conviction ſhall be.

Perſons convicted of ſtealing from the perſon of another, how puniſhed.

III. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall be convicted of the crime of theft, beſide the puniſhment of fine or whipping, as aforeſaid, he ſhall be ſentenced to forfeit treble the value of the goods or other articles ſtolen, to the owner thereof; any of the articles ſtolen, being returned, to be accounted part, according to their value. And if any ſuch offender be unable to make reſtitution or pay ſuch treble damages, the Juſtices of the Court before whom ſuch conviction is, may further ſentence him to make ſatisfaction to the perſon from whom ſuch articles were ſtolen, by ſervice, and he ſhall be, and hereby is empowered to diſpoſe of the ſaid convict in ſervice, to any perſon whomſoever, for ſuch term of time as ſhall be aſſigned by the ſame Juſtices; or they may ſentence the ſaid convict to hard labour for a term of time not exceeding three years, to take place if the owner of the articles ſtolen doth not ſell ſuch convict in thirty days after a ſentence therefor.

Perſons convicted of theft, to forfeit treble damages.

If unable, how ſentenced.

IV. *And be it further enacted*, That every Juſtice of the Peace in the county where ſuch offence is committed, is hereby authoriſed to hear and determine all offences againſt this law, provided that the treble value of the property ſtolen exceed not the ſum of *forty ſhillings*, and may ſentence ſuch offender to pay a fine not exceeding the ſum of *forty ſhillings*, or to be impriſoned for a term not exceeding twenty days, and to make ſatisfaction as above is directed.

Juſtices of the Peace authoriſed to determine offences.

Proviſo.

V. *And be it further enacted*, That when any perſon ſhall be apprehended upon a charge of the ſaid crime of theft, and be admitted to bail, he ſhall not only recognize to the Commonwealth for his appearance at the Court in ſuch recognizance mentioned, to anſwer to the ſaid charge, but he ſhall alſo enter into another recognizance, with ſufficient ſureties, to the party injured, for treble the value of the articles which he ſhall be charged with ſtealing, and if the accuſed perſon ſhall make default, and not appear to take his trial according to his recognizance, in ſuch caſe the ſaid recognizance ſhall be declared forfeited, by the Court where the ſaid accuſed perſon ought to have appeared, and the party injured ſhall recover treble damages againſt the ſureties for ſo much as can be made to appear to be ſtolen, as if the offender had put himſelf on his trial and had been convicted; and if the accuſed perſon be committed for want of bail, and upon trial be convicted and appeal to the Court of General Seſſions of the Peace, or to the Supreme Judicial Court, he ſhall recognize to the party injured to reſpond the treble damages as aforeſaid, as well as to the Commonwealth, to proſecute ſuch appeal, before he is liberated.

Perſons apprehended upon a charge of theft, and admitted to bail, what recognizance required.

If defaulted, the recognizance to be declared forfeited.

Perſons convicted of a ſecond theft to the value of 40 ſhillings.

VI. *And be it further enacted by the authority aforeſaid*, That if any perſon who now is, or who hereafter ſhall be convicted, either before a Juſtice of the Peace or in any Court of General Seſſions of the Peace, or Supreme Judicial Court within this Commonwealth, of the crime of theft, ſhall, thus ſtanding convicted on record, ſteal any money, goods or chattels, or other articles as beforementioned, to the value of *forty ſhillings*, and be thereof convicted before the Supreme Judicial Court, holden within any of the counties of this Commonwealth, he ſhall for ſuch offence be ſet upon the gallows for the ſpace of one hour, with a rope about his neck and one end thereof caſt over the gallows, and be ſeverely whipt, not exceeding thirty-nine ſtripes, and be further ſentenced to pay treble the value of the articles ſtolen, to the party injured; and the ſame Juſtices may further ſentence him to make ſatisfaction to the perſon injured as aforeſaid, by ſervice as aforeſaid, if he be unable to pay the ſame, or may ſentence ſuch convict to hard labour for a term not exceeding ſix years, in like manner as is herein before provided.

Puniſhment.

When the ſecond theft amounts to £.3.

VII. *And be it further enacted by the authority aforeſaid*, That if any perſon convicted of a ſecond theft in manner aforeſaid, or who has heretofore been convicted of a ſecond theft, ſtanding convicted of a former theft, ſhall ſteal any money, goods, chattels, or other articles, as before deſcribed, to the value of *three pounds*, and be thereof convicted before the Supreme Judicial Court, in any county in this Commonwealth, he ſhall be ſet upon the gallows for the ſpace of one hour, with a halter about his neck, and one end thereof caſt over the gallows, be ſeverely whipped, not exceeding thirty-nine ſtripes, be branded on the right cheek with the letter T. and be further ſentenced to hard labour during his natural life, and wear a chain round his leg with a large clog faſtened to the end thereof.

Puniſhment.

Perſons convicted of breaking up any dwelling-houſe in the day time, or any ſhop, &c. by night or day, with an intent to ſteal, &c.

VIII. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall break up any dwelling-houſe in the day time, with an intent to ſteal or to commit any felony, or enter any dwelling-houſe in the night time, without breaking the ſame, with an intent to ſteal or to commit any felony, or break up any warehouſe, ſhop, mill, malthouſe, barn, ſtable, outhouſe or any publick building, or other building whatſoever, or any ſhip or other veſſel being within the body of the county, by night or by day, with an intent to ſteal or commit any felony, and being thereof convicted before the Supreme Judicial Court, ſhall be ſet upon the gallows for the ſpace of one hour, with a rope about his neck, and one end thereof caſt over the gallows, and be ſeverely whipt, not exceeding ing thirty-nine ſtripes, and ſhall pay treble the value of all goods or articles ſtolen, to the perſon injured, as is before herein provided. And the Juſtices of the ſame Court may further ſentence him to make ſatisfaction for the articles ſtolen, by ſervice, as is herein before provided in caſe of theft, or ſentence him to hard labour for a term of time, not exceeding fifteen years; and if any perſon being convicted of either of theſe offences, ſhall again commit either of the ſaid offences, and be thereof convicted before the Supreme Judicial Court, he ſhall be branded on both cheeks with the letter B. and be confined to hard labour during life, as before mentioned.

Puniſhment.

Perſons twice convicted.

Puniſhment.

IX.

IX. *And be it further enacted by the authority aforeſaid*, That whoſoever ſhall comfort, aid, abet, aſſiſt, counſel, hire, command or procure any perſon to commit any of the offences herein before deſcribed, or that ſhall knowingly buy or receive any ſuch ſtolen goods, chattels or articles, or that ſhall knowingly receive, harbour, maintain or conceal any perſon guilty of any of the offences before deſcribed, ſhall be conſidered as acceſſary to the principal offender, and ſhall ſuffer the like puniſhment as he might have received on a firſt conviction; and in caſe the principal offender be not known or proſecuted, any perſon committing any of the ſaid crimes, whereby he becomes an acceſſary, may be proſecuted for a miſdemeanor, and on conviction, ſhall ſuffer ſuch puniſhment as the principal offender might have ſuffered on a firſt conviction.

Puniſhment for aiding or abetting perſons in committing offences, or receiving ſtolen goods, &c.

And whereas it ſometimes happens that perſons convicted of theft, and ſentenced to make reſtitution to the party, according to law, are unable to do the ſame, any otherwiſe than by ſervice, and their being kept in goal may occaſion great charge to the county:

X. *Be it therefore enacted, by the authority aforeſaid*, That no perſon convicted of theft, and ſentenced for the ſame, ſhall be held in priſon for or on account of the treble value awarded to the party injured, for more than the ſpace of thirty days next after ſuch ſentence given, unleſs the party injured, or ſome one in his behalf, will become engaged, or give ſecurity to the keeper of the priſon to pay and ſatisfy his charge and expenſe in keeping ſuch priſoner, both for time paſt and future, according to the rate allowed for keeping priſoners in the ſame goal by the Juſtices of the quarter ſeſſions; and in caſe the perſon injured ſhall refuſe or neglect ſo to do, and ſhall not diſpoſe of or take ſuch priſoner in ſervice, the keeper ſhall no longer be chargeable with ſuch priſoner, but may ſet him at liberty; and in every ſuch caſe the priſoner ſhall pay and ſatisfy the coſts of Court, his own fees and charges of impriſonment, and if he be unable ſo to do, upon application made by the keeper of the goal to any two Juſtices, *quorum unus*, they are hereby empowered to determine the ſum to be paid, and to order and enjoin the priſoner to make ſatisfaction by ſervice, for ſuch reaſonable time as they may aſſign, for which time the keeper may diſpoſe of the priſoner in ſervice to any citizen of the United States, unleſs the Court before whom the conviction was, ſhall have ſentenced the ſaid priſoner to hard labour, to take effect if the party injured doth not diſpoſe of him, as is herein before provided, in which caſe the ſaid priſoner ſhall be delivered over by the ſaid priſon-keeper to hard labour, according to the proviſions of law.

No perſons convicted of theft, to be held in priſon on account of treble damages, more than 30 days, unleſs.

XI. *And be it further enacted*, That when any perſon ſhall be indicted for any high and aggravated crime or miſdemeanor by the grand-jury, and upon trial of the iſſue it ſhall appear to the petit-jury, that the perſon accuſed is not guilty of the whole crime charged in the indictment, but is guilty of ſo much thereof as ſhall ſubſtantially amount to a crime of a lower nature, the petit-jury may find the indicted perſon guilty of ſuch part only, and not guilty of the whole indictment, and the Court ſhall proceed to ſentence ſuch convict for the crime of which he is found guilty, according to law.

Perſons indicted for any high crime, &c. by the grand-jury, not found guilty of the whole charge, directions in this caſe.

XII.

XII. *And be it further enacted,* That the puniſhment of hard labour mentioned in this or any other law aſſigning the ſame, ſhall be carried into execution at ſuch place and in ſuch manner as may be provided by the laws of this Commonwealth.

[This act paſſed *March* 15, 1785.]

An Act to prevent Forgery, and for the Puniſhment of thoſe who are guilty of the ſame.

Perſons guilty of forgery.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That if any perſon ſhall willingly and deceitfully forge, make or alter, or wittingly and deceitfully cauſe or procure, aid, abet or command the forging, making, or altering any matter of record, or any other matter of a publick nature, any falſe deed, laſt will or teſtament, obligation or writing ſealed, or any promiſory note, bill of exchange, acceptance, aſſignment or indorſement on them, acquittance or receipt for money or goods, or any warrant, order or requeſt for the payment of money, or delivery of goods or chattels of any kind, any certificate or accountable receipt for money or other things, any lottery-ticket, or any aſſurance of money or other property whatſoever, with intent to defraud any perſon, or who ſhall utter or publiſh, or cauſe, procure or abet to be uttered and publiſhed as true, any of the above falſe, forged or altered matters as above ſpecified and deſcribed, knowing the ſame to be falſe, altered and forged, with intent to deceive and defraud any perſon, upon conviction thereof, he ſhall be puniſhed by ſetting in the pillory, at one or more times or places, cropping one ear, whipping, impriſoning, fining, and binding to the good behaviour, all or any of theſe puniſhments, according to the nature and aggravation of the offence.

Puniſhment.

[This act paſſed *March* 16, 1785.]

An Act againſt Counterfeiting, or uttering Counterfeit Coin.

Penalty for counterfeiting or forging any gold or ſilver money.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any perſon ſhall forge, or counterfeit any ſilver or gold money, or coin, the currency of which is or ſhall be eſtabliſhed and regulated by law, or ſhall forge or counterfeit any ſilver or gold money or coin, that is or ſhall be current in this Commonwealth, he ſhall be fined at the diſcretion of the Court; be ſet in the pillory for the ſpace of one hour, and then have one of his ears cut off; and from thence be drawn to the gallows, and ſet thereon with a rope about his neck for the ſpace of one hour, and ſhall be whipped, not exceeding forty ſtripes, and ſhall then be ſentenced to hard labour for a term of not more than ſeven years.

II.

II. *And be it further enacted*, That if any perſon ſhall colour, guild, or caſe over with gold, or ſilver, or with any waſh or materials producing a colour reſembling that of gold or ſilver, any coin reſembling any money, or coin, the currency of which is or ſhall be eſtabliſhed and regulated by law, or which is or ſhall be current in this Commonwealth, or any pieces of coarſe gold or of coarſe ſilver, or of other metals, with an intent that it ſhall be coined into counterfeit milled money, reſembling the eſtabliſhed current money or coin in this Commonwealth as aforeſaid; or into pieces reſembling the gold coin eſtabliſhed, or current in this Commonwealth as aforeſaid; or that ſhall waſh, guild, or colour any lawful, or counterfeit ſilver coin, with intent to make ſuch ſilver coin reſemble any gold coin, eſtabliſhed or current in this Commonwealth as aforeſaid; or that ſhall waſh, guild or colour, or any ways alter any copper coin, with an intent to make it reſemble, either the ſilver or gold coin, the currency of which is or ſhall be eſtabliſhed, and regulated by law, or which is, or ſhall be current in this Commonwealth, being convicted thereof, ſuch perſon ſhall be adjudged guilty of forging and counterfeiting the money or coin, eſtabliſhed or current in this Commonwealth, and ſhall ſuffer the ſame puniſhments which are before in this act aſſigned for ſuch crime.

Penalty for colouring or guilding any coin reſembling gold or ſilver.

III. *And be it further enacted*, That if any perſon ſhall utter any ſuch falſe money, or coin, forged and counterfeited to the ſimilitude of the ſilver or gold money, or coin, the currency of which is or ſhall be regulated and eſtabliſhed by law, or that is, or ſhall be current in this Commonwealth, knowing the ſame to be falſe, forged and counterfeit, ſuch perſon being thereof convicted, ſhall be puniſhed by fine, not exceeding *one hundred pounds*, be ſet in the pillory one hour, be whipt, not exceeding twenty ſtripes, have one ear cut off, be bound to the good behaviour, or confined to hard labour, not exceeding three years.

Penalty for uttering any ſuch falſe money.

IV. *And be it further enacted*, That if any perſon ſhall bring into this Commonwealth, any ſuch falſe, forged and counterfeited money, or coin, or be poſſeſſed of any ſuch falſe, forged and counterfeit money or coin, as in this act is before deſcribed, knowing the ſame to be falſe, forged and counterfeit, with an intent to utter and paſs the ſame, ſuch perſon ſhall be fined a ſum not exceeding *fifty pounds*, be whipped not exceeding twenty ſtripes, and be bound to the good behaviour.

Penalty for bringing into this Commonwealth, or being poſſeſſed of any falſe or forged money.

V. *And be it further enacted*, That if any perſon ſhall knowingly make, or mend, or begin to make, or mend, any engine, preſs, ſtamp, mould, pattern, dye, puncheon or any tool whatſoever, uſed, adapted or deſigned for the coining, forging or counterfeiting gold or ſilver money, or coin, the currency of which is, or ſhall be regulated and eſtabliſhed by law, or which is, or ſhall be current in this Commonwealth, with an intent to uſe, or with an intent, or expectation, that the ſame ſhould be uſed and employed, in forging and counterfeiting ſuch ſilver or gold money, or coin, and be thereof convicted, ſuch perſon ſhall ſuffer the ſame puniſhment, as is hereinbefore provided, for forging and counterfeiting ſilver or gold money, or coin, current in this Commonwealth.

Perſons knowingly making or mending any tool whatſoever, for counterfeiting gold or ſilver money.

Penalty.

Perſons having in poſſeſſion any ſuch tool.

VI. *And be it further enacted*, That if any perſon ſhall have in his poſſeſſion any ſuch engine, preſs, ſtamp, mould, pattern, dye, puncheon, or any tool or material whatſoever, uſed, adapted or deſigned for the coining, forging, or counterfeiting ſuch ſilver or gold money, or coin, as is herein before deſcribed, with an intent to uſe and employ the ſame, or that they ſhould be uſed and employed, in coining, forging or counterfeiting ſuch ſilver or gold money, or coin as aforeſaid, being thereof convicted, ſuch perſon ſhall ſuffer the ſame puniſhment as is herein before provided, for being knowingly poſſeſſed of ſuch falſe and counterfeit money and coin, with an intent to utter the ſame.

Penalty.

Penalty for counterfeiting copper money.

VII. *And be it further enacted*, That if any perſon ſhall forge or counterfeit any copper money or coin, to the ſimilitude and appearance of the copper money or coin, the currency whereof is or ſhall be eſtabliſhed and regulated by law, he ſhall be fined, not exceeding *thirty pounds*, be whipped, not exceeding twenty ſtripes, be bound to the good behaviour, and be impriſoned, not exceeding three months.

Penalty for bringing into this Commonwealth counterfeit copper money.

VIII. *And be it further enacted*, That if any perſon ſhall knowingly bring into this Commonwealth, any ſuch falſe, forged and counterfeit copper money or coin, with an intent to utter the ſame, ſuch perſon ſhall, upon conviction thereof, be puniſhed by fine, not exceeding *fifty pounds*; by impriſonment, not exceeding ſix months; ſhall be whipped, not exceeding twenty ſtripes, and be bound to the good behaviour.

Rewards for informing of offences.

IX. *And be it further enacted*, That whoſoever ſhall inform of any of the foregoing offences, ſo as the offenders may be convicted of the ſame, ſhall receive out of the publick treaſury the following rewards, *viz.* for informing of, and proſecuting to conviction, one or more perſons, guilty of the ſame forging or counterfeiting any ſilver or gold, or making or mending any engine or tool for forging and counterfeiting ſilver or gold money, or coin, as deſcribed in this act, the ſum of *twenty-five pounds*; and for informing and bringing to conviction, one or more perſons, guilty of uttering any falſe ſilver or gold coin, or money, knowingly, or of bringing the ſame into this Commonwealth, with an intent to utter it, or of having any engine, preſs or tool whatſoever for coining the ſame, as before deſcribed, the ſum of *fifteen pounds*; in order to which, two of the Juſtices of the Supreme Judicial Court, ſhall give to ſuch perſon as ſhall appear to them to be the informer, a certificate of the conviction and of the name of the proſecutor; and if any diſpute ſhall ariſe between ſeveral perſons, claiming to be proſecutors, the ſaid Juſtices ſhall determine to whom the reward ſhall be paid, and if to more than one, then in what proportion.

Juſtices of the Supreme Judicial Court, may abate any part of the penalties, at their diſcretion.

X. *And be it further enacted*, That the Juſtices of the Supreme Judicial Court, before whom all perſons, charged with any of the offences before deſcribed, ſhall be tried, may and ſhall at their diſcretion, abate any part of the pains and penalties aforeſaid, according to the circumſtances of the offence.

XI.

XI. *And be it further enacted,* That if any perſon ſhall be convicted a ſecond time of any of the offences deſcribed in this act, he may be puniſhed as is mentioned herein, for the firſt conviction of the ſame offence, and alſo by confinement to hard labour for life, or any term of years, according to the nature of the offence, at the diſcretion of the Court.

Perſons convicted a ſecond time, how puniſhed.

XII. *And be it further enacted,* That all other acts, againſt clipping, diminiſhing, or counterfeiting any coined money, eſtabliſhed by law, or current in this Commonwealth, be, and they hereby are repealed.

All other acts againſt counterfeiting money, repealed.

[This act paſſed *July* 4, 1786.]

An Act for the Puniſhment of Fornication, and for the Maintenance of Baſtard Children.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any man commit fornication with any ſingle woman, upon due conviction thereof, he ſhall be fined to the uſe of the county where the crime may be committed, not exceeding the ſum of *five pounds*, nor leſs than *thirty ſhillings*; and if he declare himſelf unable, or ſhall neglect for the ſpace of twenty-four hours after paſſing the ſentence, to pay the fine and coſts, then he ſhall be whipped, not exceeding ten ſtripes, at the diſcretion of the Juſtices of the Seſſions, before whom the matter ſhall be tried; and the woman ſo offending, upon due conviction thereof, ſhall be fined to the uſe of the county where the crime may be committed, not exceeding the ſum of *three pounds*, nor leſs than *ſix ſhillings*; and if ſhe ſhall declare herſelf unable, or ſhall neglect for the ſpace of twenty-four hours, to pay the fine and coſts, then for the firſt offence, ſhe ſhall be committed to priſon, or to the houſe of correction, there to remain not more than ten days, nor leſs than twenty-four hours; and for each offence after the firſt, ſhe ſhall pay a fine not exceeding *ſix pounds*, nor leſs than *twelve ſhillings*; and if ſhe ſhall declare herſelf unable, or ſhall neglect for the ſpace of twenty-four hours, to pay the fine and coſts, then ſhe ſhall be committed to priſon, or to the houſe of correction, there to remain not more than thirty days, nor leſs than forty-eight hours.

Penalty for committing fornication.

Provided nevertheleſs, If any woman guilty of the crime aforeſaid, ſhall appear before any Juſtice of the Peace within the county where ſuch offence may be committed, and confeſs herſelf to be guilty as aforeſaid, and offer to pay into the hands of the ſaid Juſtice, for the firſt offence, the ſum of *ſix ſhillings*, and for any offence after the firſt, the ſum of *twelve ſhillings*, it ſhall be the duty of ſuch Juſtice to receive ſaid fine, or to bind her over to the next Court of General Seſſions of the Peace, to be holden within and for ſaid county, at his diſcretion; and a certificate of the payment of the ſaid fine, ſigned by the ſame Juſtice, and filed in the Clerk's office of the Court of the General Seſſions of the Peace, ſhall be a full

Proviſo, when any woman ſhall confeſs herſelf guilty before a Juſtice of the Peace.

full bar to any proceſs againſt her for the ſame offence, unleſs ſuch proceſs be commenced previous to the filing of the ſaid certificate in the Clerk's office as aforeſaid.

When any woman is delivered of, or is pregnant with a baſtard child, and ſhall accuſe any man of being the father, &c. he ſhall be adjudged the reputed father.

II. *And be it further enacted by the authority aforeſaid,* That whenever any woman who hath been delivered of a baſtard child, or being pregnant with a child, which if born alive may be a baſtard, ſhall accuſe any man of being the father thereof, before any Juſtice of the Peace, upon examination on oath, and being put upon the diſcovery of the truth reſpecting the ſame accuſation in the time of her travail, ſhall thereupon accuſe the ſame perſon of being the father of the child, of which ſhe is about to be delivered, and ſhall continue conſtant in ſuch accuſation, and ſhall proſecute him as the father of ſuch child before the Court of the General Seſſions of the Peace, in the manner herein after preſcribed (in which proſecution ſhe ſhall be admitted as a competent witneſs, and her credibility be left to the Jury) he ſhall be adjudged the reputed father of ſuch child, notwithſtanding his denial, and ſtand charged with the maintenance thereof, with the aſſiſtance of the mother, as the Juſtices of the ſame Court ſhall order; and ſhall give ſecurity to perform the ſaid order, and to ſave the town or place which might be otherwiſe chargeable with the maintenance of ſuch child, free from charge for its maintenance; and may be committed to priſon until he find ſureties for the ſame, unleſs the pleas and proofs made and produced on the behalf of the man ſo accuſed, and other circumſtances, be ſuch as the Jury, by whom the iſſue, whether he is guilty or not guilty, ſhall be tried, ſhall find him not guilty; in which caſe the Juſtices of the ſaid Court ſhall acquit him thereof; and the verdict of the Jury of the ſame Court, whether guilty or not guilty, ſhall be final reſpecting ſuch iſſue. *Provided,* That no woman ſhall be admitted as a witneſs as aforeſaid, who has been convicted of any crime, which would by law diſqualify her from being a witneſs in any other cauſe. And every Juſtice of the Peace, to whom complaint is made by any woman, that ſhe hath been delivered, or is pregnant as aforeſaid, and deſires a proſecution againſt the man whom ſhe accuſes of being the father of the child, the Juſtice ſhall then proceed to take her accuſation and examination in writing, under oath, reſpecting the man ſo accuſed, and the time and place where ſhe was begotten with child, with ſuch other circumſtances as he ſhall judge neceſſary for the diſcovery of the truth of ſuch accuſation; which examination ſhall be given in evidence on the trial of the iſſue; and at his diſcretion may bind him that is ſo accuſed to the next General Seſſions of the Peace, with ſufficient ſurety or ſureties, to anſwer to ſuch accuſation, and abide the order of Court thereon. And if the woman be not then delivered, or be unable perſonally to attend the ſaid Court, may order the continuance or renewal of his and her bond, that they may be forth coming at the next Court of General Seſſions of the Peace after the birth of the child; and the continuance of ſuch bonds aforeſaid to the next Court of General Seſſions of the Peace, entered thereon

Proviſo.

Duty of Juſtices of the Peace, when complaint is made by any woman, that ſhe is pregnant, &c.

thereon by order of the ſaid Court (unleſs the ſurety or ſureties ſhall object thereto) ſhall have the ſame force and effect as a recognizance taken in Court for the next term.

III. *And be it further enacted by the authority aforeſaid,* That all laws heretofore in force reſpecting the ſubject matter of this act, be and they are hereby declared to be repealed; touching all caſes, that may happen after the paſſing of this act. Laws heretofore made, repealed.

[This act paſſed *March* 15, 1786.]

An Act againſt Duelling.

WHEREAS divers perſons, from the want of a due regard to the life of man, and in contempt of the authority and government of the Supreme Giver and Diſpoſer of life, a regard to which is eſſentially neceſſary to the preſervation and happineſs of a republick, and in violation of the wiſe and righteous laws of civil ſociety, have voluntarily and maliciouſly engaged in the deteſtable and infamous practice of Duelling, whereby upon falſe notions of honour, that reſult from a want of moral ſenſe and human feeling, many lives have been loſt, and many families have been brought to diſtreſs and ruin: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That whoſoever ſhall for private malice, diſpleaſure, fury or revenge, voluntarily engage in a Duel with rapier or ſmall ſword, back ſword, piſtol, or any other dangerous weapon, to the hazard of life, although death doth not thereby enſue, and ſhall in due courſe of law before the Supreme Judicial Court, in any county in this Commonwealth, be convicted thereof, ſhall be carried publickly in a cart to the gallows with a rope about his neck, and ſet thereon for the ſpace of one hour, with a rope about his neck as aforeſaid, and be committed to the common gaol of the county, without bail or mainprize, for the ſpace of twelve months, and find ſureties for the peace and good behaviour for the ſpace of one year after the expiration of the ſaid twelve months, or in lieu of the ſaid impriſonment ſhall be publickly whipped, not exceeding thirty-nine ſtripes. Penalty for engaging in a duel, where death doth not enſue.

II. *And be it further enacted by the authority aforeſaid,* That any perſon who ſhall by word, meſſage, or any other way challenge another to fight a Duel, or ſhall accept a challenge, although no Duel be fought, or ſhall any ways abet, prompt, encourage or ſeduce any perſon to fight a Duel, or to challenge another to fight, and be convicted thereof in manner as aforeſaid, ſhall be fined to the uſe of the Commonwealth, in a ſum not exceeding *three hundred pounds,* ſhall ſuffer ſix months impriſonment, find ſureties for the peace and good behaviour for the term of one year, and be incapable of ſuſtaining any office under the government for the term of three years next following the time of ſuch conviction, or ſhall be liable to any or all thoſe puniſhments at the diſcretion of the Court. Penalty for challenging.

The body of a perſon killed in a duel, how to be diſpoſed of.

III. *And be it further enacted*, That when it ſhall appear by the coroner's inqueſt that any perſon hath been killed in fighting a Duel, the coroner of the county where the fact was committed, ſhall be, and he hereby is directed and empowered to take effectual care that the body of ſuch perſon killed be immediately ſecured and buried without a coffin, with a ſtake drove through the body at or near the uſual place of execution, or ſhall deliver the body to any ſurgeon or ſurgeons to be diſſected and anatomized, that ſhall requeſt the ſame and engage to apply the body to that uſe; but in caſe the body ſhall not be delivered to any ſurgeon or ſurgeons as aforeſaid, it ſhall be buried as before directed. *Provided*, The ſaid place of execution ſhall be within ten miles of the town or place where the perſon was killed, otherwiſe the body ſhall in like manner be buried in the moſt publick road in the town or place where the fact was committed; and the charge of the coroner's inqueſt as well as of the burial of the body (if the ſame ſhall be buried) ſhall be defrayed out of the eſtate of the deceaſed (if any there be to be found) by warrant of diſtreſs, to be awarded by the Supreme Judicial Court, upon the coroner's preſenting a bill of charge therefor; and if no eſtate be found, then the charge ſhall be paid out of the treaſury of the county where the fact was committed.

The ſentence of the Court againſt any perſon convicted of killing another in a duel.

IV. *And be it further enacted by the authority aforeſaid*, That any perſon who ſhall ſlay or kill any other in a Duel, or fight as aforeſaid, and ſhall upon conviction thereof on an indictment for murder receive ſentence of death, part of the judgment of the Court upon ſuch conviction ſhall be, that the body be delivered to any ſurgeon or ſurgeons to be diſſected and anatomized, that ſhall appear in a reaſonable time after execution to take the body and engage to apply it to that purpoſe; but if none ſhall appear as aforeſaid, then the ſheriff who ſhall have execution done on the malefactor, ſhall bury the body without a coffin, in the ſame manner as the coroner in this act is directed to bury the body of a perſon killed in a Duel.

[This act paſſed *June* 30, 1784.]

An Act againſt Perjury, and Subornation of Perjury.

Puniſhment for perjury.

BE *it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That if any perſon being lawfully required to depoſe the truth in any proceeding in a courſe of juſtice, ſhall commit any manner of wilful Perjury, every perſon ſo offending and being thereof convicted before the Juſtices of the Supreme Judicial Court, ſhall forfeit and pay a fine not exceeding *three hundred pounds*, or be ſet in the pillory not more than two hours, nor leſs than one hour at a time, and at divers times and places, or ſhall be whipped at the publick whipping poſt, not exceeding thirty-nine ſtripes, on the naked back, at one or more times and places, not exceeding three times or three places,

places, and ſhall ſuffer all or part of theſe puniſhments according to the aggravation of the Perjury, as affecting life, liberty, reputation or property; and the oath of ſuch perſon ſo offending, and thereof duly convicted as aforeſaid, ſhall not be received in any Court of record, until ſuch time as the judgment given againſt ſuch perſon ſhall be reverſed.

For ſubornation of perjury.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall commit ſubornation of Perjury, by procuring another perſon to commit wilful and corrupt Perjury as aforeſaid, every perſon guilty of ſuch ſubornation of Perjury, and being thereof duly convicted, ſhall be liable to, and ſuffer the ſame forfeitures, pains, penalties and diſabilities, in all reſpects, as abovementioned, according to the aggravation of his offence.

Puniſhment for endeavouring to incite others to commit perjury.

III. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall wilfully and corruptly endeavour to incite or to procure another perſon to commit wilful and corrupt Perjury as aforeſaid, and the perſon ſo incited do not commit ſuch Perjury, the perſon ſo corruptly endeavouring to incite and procure the committing of Perjury, ſhall be puniſhed by fine, not exceeding *one hundred pounds*, or impriſonment, not exceeding two years, or both, according to the aggravation of the offence, and binding to the good behaviour, at the diſcretion of the Court before whom the ſame is tried.

[This act paſſed *March* 9, 1785.]

An Act making additional Proviſion for the Puniſhment of Frauds and Miſdemeanors.

Preamble.

WHEREAS offenders, convicted of certain offences, may by law be committed to hard labour in the houſe of correction; and the ſeveral goals in the ſeveral counties, where no other place or places are ſpecially provided, are declared to be the houſes of correction; which are by experience found inconvenient for the purpoſe:— And whereas Caſtle-Iſland, in the harbour of Boſton, *is by law appointed a place for the employment of perſons ſentenced to hard labour, for larcenies in certain caſes:*

Perſons under ſentence, to be removed to Caſtle-Iſland.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all perſons who are now under ſentence to be confined to hard labour, for a term of one year or more in the houſe of correction, ſhall be removed to Caſtle-Iſland, in the harbour of *Boſton*, there to be employed in hard labour, and kept as the law directs, during the reſidue of the term for which they are ſentenced as aforeſaid; by a proceſs iſſuing from the ſame Court which paſſed ſuch ſentence:

Proviſo.

Provided, Such reſidue ſhall exceed the periods hereafter expreſſed, to be computed from the time of iſſuing the proceſs aforeſaid,

ſaid, *that is to ſay*, in the counties of *Hampſhire*, or *Berkſhire*, the term of twelve months, and in any other county, the term of ſix months.

Juſtices of the Supreme Judicial Court authorized to ſentence at diſcretion, in certain caſes.

II. *And be it further enacted by the authority aforeſaid*, That in all ſuch caſes where the Juſtices of the Supreme Judicial Court are authorized by the laws of this government now in force, to ſentence any perſons convicted before them of any offence, to hard labour in the houſe of correction as aforeſaid, it ſhall and may be lawful for the Juſtices of the ſame Court, at their diſcretion, to ſentence all ſuch convicts to hard labour generally, for and during the term only for which they might have been ſentenced to be confined to hard labour in the houſe of correction, before the making of this act, and for that purpoſe to order them to be removed to Caſtle-Iſland, in the harbour of *Boſton*, or ſuch other place as ſhall be by law provided.

Perſons convicted of forgery, may be ſentenced to hard labour.

III. *And be it further enacted by the authority aforeſaid*, That when any perſon ſhall be hereafter convicted before the Supreme Judicial Court, of any of the offences mentioned or deſcribed in an act entitled, "An act to prevent forgery, and for the puniſhment of thoſe who are guilty of the ſame," paſſed the ſixteenth of *March*, one thouſand ſeven hundred and eighty-five, the Juſtices of the ſame Court may, in addition to, or in lieu of the pains and penalties mentioned in the ſame act, ſentence ſuch offenders to hard labour, for a term not exceeding ſeven years, upon the firſt conviction, fourteen years upon the ſecond conviction, and during life upon the third conviction.

Whereas idleneſs is often the parent of fraud and cheating, and confinement to hard labour may be a means of reclaiming ſuch offenders, as well as a proper puniſhment for ſuch offences:

Perſons convicted of frauds or cheats, may be ſentenced to hard labour.

IV. *Be it therefore enacted by the authority aforeſaid*, That whenever any perſon ſhall be hereafter convicted before the Juſtices of the Supreme Judicial Court, of any groſs frauds or cheats, other than thoſe herein beforementioned or referred to, the ſaid Juſtices may at their diſcretion, in addition to, or in lieu of ſuch pains and penalties as they may by law award and order to be inflicted upon ſuch offenders, ſentence them to be confined to hard labour for a term not exceeding ſeven years.

And whereas, in and by an act entitled, "An act for the eſtabliſhment of a national bank," &c. paſſed *March* the eighth, one thouſand ſeven hundred and eighty-two, the offences therein deſcribed, are made felony of death without benefit of clergy:

Offences deſcribed in an act eſtabliſhing a national bank, how puniſhed.

V. *Be it therefore enacted by the authority aforeſaid*, That if any perſon ſhall be hereafter convicted of any of the offences therein mentioned, the Court before whom ſuch conviction ſhall be had, ſhall not proceed to paſs ſentence of death upon ſuch convict, but in lieu thereof, ſentence him to hard labour for term of life, or years, to ſtand in the pillory, at one or more times or places, not exceeding three; to have one ear cut off; to be whipped at one or more times or places, not exceeding four times, and thirty-nine ſtripes at

a time ; to ſit upon the gallows with a rope about his neck ; to be branded in the forehead with the letter F ; to be impriſoned not exceeding one year ; to be fined at the diſcretion of the Court ; to be bound to the good behaviour ; or to any one or more of them, according to the nature and aggravation of the offence.

[This act paſſed *November*, 1, 1785.]

An Act to prevent Fraud and Perjury.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That no action ſhall be brought, whereby to charge an executor or adminiſtrator, upon any ſpecial promiſe to anſwer damages out of his own eſtate ; or whereby to charge the defendant, upon any ſpecial promiſe, to anſwer for the debt, default or miſdoings of another perſon, or to charge any perſon upon any agreement made upon conſideration of marriage, or upon any agreement that is not to be performed within the ſpace of one year, from the making thereof, unleſs the agreement upon which ſuch action ſhall be brought, or ſome memorandum, or note thereof, ſhall be in writing, and ſigned by the party, to be charged therewith, or ſome other perſon thereunto by him lawfully authorized.

No action ſhall be brought againſt any perſon, upon any ſpecial promiſe, &c. unleſs the agreement ſhall be in writing, and ſigned by the party.

II. *And be it further enacted by the authority aforeſaid,* That no contract for the ſale of any goods, wares or merchandize, for the price of *ten pounds* or more, ſhall be allowed to be good, except the purchaſer ſhall accept part of the goods ſo ſold, and actually receive the ſame, or give ſomething in earneſt to bind the bargain, or in part payment, or that ſome note or memorandum in writing of the ſaid bargain be made and ſigned, by the parties to be charged by ſuch contract, or their agents, thereunto lawfully authorized.

No contract for the ſale of goods, ſhall be allowed to be good, except the purchaſer ſhall accept a part of ſuch goods, &c.

III. *And be it further enacted by the authority aforeſaid,* That whenever a debtor in execution, having goods, effects or credits, to the amount of *ten pounds* or more, (that are unattachable by the common and ordinary proceſs of law) ſhall ſpend or uſe the ſame, or ſo much thereof for his ſubſiſtence, as ſhall amount to the ſum upon which he is committed in execution, without giving the creditor, his agent, factor or attorney, notice where, and of what kind they are, and enabling him, if he thinks proper, to accept the ſame, or ſuch part of them, as will amount to the debt, for which he is in execution, in ſatisfaction thereof, ſuch neglect ſhall be eſteemed and taken, as a fraudulent tranſaction in the debtor ; and every perſon who ſhall knowingly aid and aſſiſt a debtor, in ſuch fraudulent tranſaction, ſhall be anſwerable and chargeable to the creditor, to double the full value of the money, goods, or effects, by him or them thus ſecreted, ſpent or embezzled, in a ſpecial action on the caſe.

Clauſe reſpecting fraudulent tranſactions of debtors in execution.

IV. *And be it further enacted by the authority aforeſaid,* That whenever a judgment creditor, ſhall diſcover goods, effects or cre-

When a judgement creditor, ſhall diſcover goods, &c. of his debtor, that are unattachable——proviſion in ſuch caſes.

dits of his debtor, that are unattachable by the common and ordinary proceſs of law, he ſhall be entitled to the proceſs provided in the act, made to enable creditors to receive their juſt debts, out of the effects of their abſent or abſconding debtors; and upon the agent, factor or truſtee's being ſummoned in the manner the ſaid act directs, all the money, goods, effects and credits in his hands, ſhall be ſecured to reſpond the judgment that may be given thereon, and he ſhall anſwer thereunto, at the firſt term, in caſe his principal has perſonal or other ſufficient and legal notice of the ſuit, fourteen days before the Court's ſitting.

Proviſo.

Provided always, That upon a judgment creditor's purſuing ſuch remedy to recover his debt, he ſhall within ſeven days after the ſame proceſs on the ſuppoſed agent is ſerved, diſcharge the body of the debtor, (in caſe he is taken in execution upon the ſame judgment) by a note or memorandum in writing, directed and delivered to the officer, who has him in cuſtody, ſtating the reaſon and occaſion of the diſcharge of the perſon of the debtor; and ſuch a diſcharge ſhall not vacate, annul, or in any manner injure the original judgment; but in caſe the judgment creditor, ſhall not within the ſeven days diſcharge the perſon of the debtor, in manner aforeſaid, the proceſs commenced as aforeſaid, ſhall abate, and the debtor ſhall recover treble coſts.

[This act paſſed *June* 20, 1788.]

An Act to prevent Frauds on the *Maſſachuſetts* Bank.

Officers of the bank embezzeling any money, &c. their puniſhment.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any preſident, director, officer, or ſervant of the *Maſſachuſetts* Bank, ſhall ſecret, embezzle, or convert to his own uſe, any note, bill, obligation, ſecurity, money, or effects, belonging to the ſaid Bank, or depoſited there by any other perſon, every perſon ſo offending and being thereof convicted before the Supreme Judicial Court, ſhall be ſet upon the gallows with a rope about his neck, or be ſet in and upon the pillory, for the ſpace of two hours, ſhall forfeit all his perſonal eſtate, and the iſſues and profits of his real eſtate during life, to the uſe of the Commonwealth, (after deducting ſuch ſum as ſhall indemnify the Bank for the loſs they may have ſuſtained by means of the ſaid fraud) and ſhall ever after be rendered infamous and incapable of ſuſtaining any office either civil or military.

Perſons who ſhall counterfeit any bank note, &c. their puniſhment

II. *And be it enacted by the authority aforeſaid*, That if any perſon ſhall forge, counterfeit, or alter any bill, note, or obligation, made, ſigned, or given for or in the name of the preſident, directors, caſhier, or other perſon in behalf of the ſaid Bank, or ſhall forge, counterfeit, or alter any indorſement on ſuch bill, note, or obligation, or ſhall forge, alter, or counterfeit any order or check drawn by any perſon on the ſaid preſident, directors, or caſhier; every perſon ſo offending, and being thereof convicted before the

Supreme

Supreme Judicial Court, ſhall ſuffer the pains, penalties, forfeitures, and diſabilities as aforeſaid, and ſhall be ſubjected to hard labour within this Commonwealth, during the term of ſeven years; to be diſpoſed of by the directors of the ſaid Bank, in ſuch manner and under ſuch confinement as they ſhall direct, for the uſe and benefit of the ſaid Bank.

Perſons who ſhall knowingly paſs counterfeit bank notes, &c. their puniſhment.

III. *And be it enacted by the authority aforeſaid*, That if any perſon ſhall utter, paſs, tender in payment, or offer to paſs any forged, altered, or counterfeited bill, note, or obligation, made, ſigned, or given in the name of the ſaid preſident, directors, caſhier or other perſon, in behalf of the ſaid Bank, or any order or check drawn by any perſon on the ſaid preſident, directors, or caſhier, knowing ſuch bill, note, obligation, or check to be ſo forged, altered, or counterfeited; every perſon ſo offending, and being convicted as aforeſaid, ſhall ſuffer the pains, penalties, forfeitures, and diſabilities as aforeſaid, and ſhall be ſubjected to hard labour in manner and for the purpoſe as aforeſaid.

Perſons who ſhall counterfeit inſtruments to convey ſhares of bank ſtock, their puniſhment.

IV. *And be it enacted by the authority aforeſaid*, That if any perſon ſhall forge, alter, or counterfeit any letter of attorney, order or other inſtrument, to transfer or convey any ſhare or ſhares of ſtock in the ſaid Bank, or to receive the ſame or any dividend or part thereof, or ſhall knowingly and fraudulently demand to have ſuch ſhare or ſhares, dividend, or any parts thereof, transfered, conveyed, or received by virtue of ſuch forged, altered, or counterfeited letter of attorney, order or other inſtrument, or ſhall falſely and deceitfully perſonate any true and lawful proprietor or proprietors of any ſhare or ſhares of ſtock or dividend, or money, or other property depoſited in the ſaid Bank, thereby transferring or endeavouring to transfer the ſaid ſtock, dividend, money, or other property, or receiving or endeavouring to receive the ſaid ſtock, dividend, money, or other property, in every ſuch caſe the perſon ſo offending and being thereof convicted as aforeſaid, ſhall ſuffer the pains, penalties, forfeitures, and diſabilities as aforeſaid, and ſhall be ſubjected to hard labour in manner and for the purpoſe as aforeſaid.

[This act paſſed *March* 16, 1784.]

An Act againſt ſelling Unwholeſome Proviſions.

Preamble.

WHEREAS ſome evilly diſpoſed perſons, from motives of avarice and filthy lucre, have been induced to ſell diſeaſed, corrupted, contagious or unwholeſome proviſions, to the great nuiſance of publick health and peace:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any perſon ſhall ſell any ſuch diſeaſed, corrupted, contagious or unwholeſome Proviſions, whether for meat or drink, knowing the ſame, without making it known to the buyer, and being thereof

thereof convicted before the Juſtices of the General Seſſions of the Peace, in the county where ſuch offence ſhall be committed, or the Juſtices of the Supreme Judicial Court, he ſhall be puniſhed by fine, impriſonment, ſtanding in the pillory, and binding to the good behaviour, or one or more of theſe puniſhments, to be inflicted according to the degree and aggravation of the offence.

[This act paſſed *March* 8, 1785.]

An Act for preventing Common Nuiſances.

Selectmen with two Juſtices to aſſign places for killing creatures for meat, diſtilling ſpirits, &c.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the ſelectmen of *Boſton, Salem, Newbury-Port* and *Charleſtown*, reſpectively, and of every other town in this Commonwealth where the ſelectmen thereof, together with any two Juſtices of the Peace in the ſame county, ſhall judge ſuch regulation to be neceſſary, ſhall from time to time, as occaſion ſhall be, aſſign ſome certain places for the exerciſing of any of the trades or employments of killing creatures for meat, diſtilling of ſpirits, trying of tallow or oil, currying of leather, and making earthern ware, and forbid and reſtrain the exerciſe of either of them in other places not ſo approved and allowed; and all aſſignments of ſuch houſes or places by ſelectmen, with the aſſent of two or more Juſtices, for the exerciſe of any of the occupations aforeſaid, ſhall be entered in the town book where ſuch ſelectmen reſpectively belong; and alſo made known by having notifications thereof poſted up in ſome publick places in the ſame town.

When any houſe aſſigned becomes a nuiſance, Court of Seſſions to cauſe enquiry, &c.

II. *And be it further enacted,* That when any houſe aſſigned for the exerciſing of either of the aforeſaid trades or employments becomes a nuiſance by reaſon of offenſive and ill ſtenches proceeding from the ſame, or becomes otherways hurtful or dangerous to the neighbourhood or travellers, it ſhall and may be lawful to and for the Court of General Seſſions of the Peace, within the county, to cauſe enquiry to be made thereinto by a jury, and to ſuppreſs ſuch nuiſance by prohibiting and reſtraining the further uſe thereof for the exerciſe of either of the aforeſaid trades or employments, under a fine not exceeding *three pounds* a month, to the uſe of the poor of the town; or by cauſing ſuch nuiſance to be removed or prevented, as the ſaid Juſtices in ſeſſions, in their diſcretion, ſhall think expedient and neceſſary.

Penalty for making uſe of houſes &c. other than ſuch as are or may be aſſigned.

III. *And be it further enacted,* That if any diſtiller, tallow chandler, manufacturer of oil, currier, butcher or potter, ſhall make uſe of any houſe or place, other than ſuch as are or may be aſſigned and permitted in conſequence of this act, for the exerciſe of the employments aforeſaid, or any of them, the perſon ſo offending ſhall forfeit and pay a fine of *five pounds*, one half thereof for the uſe of this Commonwealth, and the other half part for the uſe of him or them that ſhall proſecute and ſue therefor, by action of debt,

debt, in the Court of Common Pleas; and if convicted on the preſentment of a Grand Jury, in the Court of Seſſions or Supreme Judicial Court, the whole penalty ſhall inure to the uſe of the Commonwealth; and in either caſe the offender ſhall alſo enter into recognizance in ſuch ſum as the ſame Court ſhall order, not to improve ſuch building for either of the ſaid purpoſes for the term of three years then next; and in default of entering into ſuch recognizance, to be committed to the common gaol; or ſuch building may be taken down by the order of the ſame Court, as being a common nuiſance, and the materials, or ſuch part of them as may be neceſſary, ſold at publick auction, to defray the expences and charges; and in caſe the materials ſhall be inſufficient, the reſidue of the charges to be levied by diſtreſs and ſale of the offender's goods and chattels.

Fences, &c. ſet up on publick landing places, without permiſſion, eſteemed nuiſances.

IV. *And be it further enacted, by the authority aforeſaid,* That all fences or buildings ſet up and erected on lands now uſed and improved as publick landing places, or ſuch as may be hereafter laid out and appropriated to that uſe, without lawful permiſſion therefor, ſhall be eſteemed nuiſances, and may be abated as ſuch.

[This act paſſed *June* 7, 1785.]

An Act againſt Hawkers, Pedlars, and Petty Chapmen.

Preamble.

WHEREAS inconveniences ariſe to trade, by hawkers, pedlars and petty chapmen, paſſing to, from and through the country, to vend goods, wares and merchandize:

Hawkers, pedlars, &c. going from town to town, to ſell goods.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That every hawker, pedlar, petty-chapman, or other perſon going from town to town on foot, or with a horſe or horſes, or otherwiſe, carrying to ſell, or expoſing to ſale, any wares, goods or merchandize, within this Commonwealth, ſhall forfeit a ſum not exceeding *four pounds*, nor leſs than *twenty ſhillings*, alſo one quarter part of all ſuch goods, wares or merchandize by him or them expoſed to ſale, or ſo conveyed or tranſported as aforeſaid, to him or them that ſhall proſecute therefor, by information or complaint before the Court of General Seſſions of the Peace in the ſame county.

Forfeiture.

Proviſo.

Provided nevertheleſs, That nothing herein ſhall prohibit or hinder any perſon, who is the real worker or maker of any goods or wares, or his ſervants or agents, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods or wares of his own making, or other articles manufactured within this Commonwealth, in any fair, market or elſewhere, or from ſelling any fiſh, fruits or proviſions; or any tinker, cooper, glazier, or mender, or other perſon, from going about and carrying with him proper materials for mending the things uſually made or mended in the exerciſe of his trade. And

Juſtices of the Peace to ſummon perſons complained againſt, and order them to recognize.

any Juſtice of the Peace, upon complaint to him made of any ſuch offence, may arreſt or ſummon before him the perſon or perſons complained againſt, and order him or them to recognize, with ſufficient ſurety or ſureties, to appear and anſwer the complaint or information that may be exhibited againſt him or them, before the next Court of Seſſions of the Peace in the county where the offence is ſaid to be committed; and for want of ſufficient ſurety, to commit ſuch offender or offenders to the common goal of the county; and alſo to ſecure and detain all ſuch goods, wares and merchandize until the trial. *Provided*, The complainant will enter into recognizance with ſurety before the ſame Juſtice, to the ſuppoſed offender, in a ſufficient ſum, to pay coſt, in caſe the complainant ſhall fail of proſecuting or convicting the offender; and the Court of General Seſſions of the Peace may aſſeſs coſts upon the trial for or againſt the complainant, as the caſe may require; and all taverners, ale houſe keepers, common victuallers or retailers, that ſhall knowingly entertain any hawker, pedlar or petty chapman, or other trading perſon aforeſaid, for the ſpace of twelve hours, ſhall forfeit and pay the ſum of *twenty ſhillings*, for every ſix hours after the firſt twelve (unleſs the departure of ſuch hawker, pedlar or petty chapman ſhall be prevented by means of ſickneſs, or any other unavoidable neceſſity) to him or them who will proſecute and ſue therefor by action of debt.

Proviſo.

Penalty for entertaininghawkers, &c.

[This act paſſed *June* 9, 1785.]

An Act for ſuppreſſing and puniſhing of Rogues, Vagabonds, common Beggars and other idle, diſorderly and lewd Perſons.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That there ſhall be erected, built, or otherwiſe provided by the Court of General Seſſions of the Peace, in every county within this Commonwealth, at the charge of ſuch county, a fit and convenient houſe or houſes of correction (where ſuch houſe is not already provided) with convenient accommodations thereunto adjoining and belonging; to be uſed and employed, for the keeping, correcting and ſetting to work of Rogues, Vagabonds, common Beggars, and other idle, diſorderly and lewd perſons.

Houſe of correction to be built in every county.

And until ſuch houſe or houſes of correction be erected, built, or otherwiſe provided, the common priſon in each county may be made uſe of for that purpoſe.

Until built, priſons to be made uſe of.

II. *And be it further enacted by the authority aforeſaid*, That the Court of General Seſſions of the Peace in each county, may nominate and appoint at their will and pleaſure, a ſuitable perſon to be maſter of ſuch houſe of correction. And alſo to make, ordain and eſtabliſh ſuch rules and orders as may be neceſſary (not repugnant to the laws of this Commonwealth) for the ruling, governing and puniſhing of

Maſters of ſuch houſes to be appointed.

of ſuch perſons as may be there committed; and ſuch rules and orders by them made, ſhall be in force and put in execution. And any Juſtice of the Peace, as well as the Court of Seſſions, may ſend and commit unto the ſaid houſe, to be kept and governed according to the rules and orders thereof, all Rogues, Vagabonds and idle perſons, going about in any town or place in the county, begging; or perſons uſing any ſubtle craft, juggling or unlawful games or plays, or feigning themſelves to have knowledge in phyſiognomy, palmiſtry, or pretending that they can tell deſtinies, or fortunes, or diſcover where loſt or ſtolen goods may be found; common pipers, fidlers, runaways, ſtubborn ſervants or children, common drunkards, common night walkers, pilferers, wanton and laſcivious perſons in ſpeech, conduct or behaviour; common railers or brawlers, ſuch as neglect their callings or employment, miſpend what they earn, and do not provide for themſelves, or the ſupport of their families, upon conviction of any of the offences or diſorders aforeſaid, complaint thereof having been made in writing.

Rules & orders for governing ſuch houſes.

Who are to be committed to ſuch houſes, and by whom.

III. *And be it further enacted by the authority aforeſaid*, That the maſter of ſuch houſe of correction to be appointed as aforeſaid, ſhall have power and authority, and ſhall ſet all ſuch Rogues, Vagabonds, Beggars, and other lewd, idle and diſorderly perſons as aforeſaid, that ſhall be duly ſent or committed unto his cuſtody, to work and labour (if they be able) for ſuch time as they ſhall continue and remain in the ſaid houſe; and to puniſh them by putting ſhackles or fetters upon them; and alſo from time to time, in caſe they be ſtubborn, diſorderly, idle or refractory, and do not perform their taſks, and in good condition, according as they ſhall be reaſonably ſtinted, or to abridge them of their food, as the caſe ſhall require, until they be reduced to better order.

To be ſet to work.

How puniſhed when diſorderly, &c.

IV. *And be it further enacted by the authority aforeſaid*, That when any perſon ſhall be committed to the ſaid houſe, the Selectmen of the town to which he or ſhe belongs (if within the government) ſhall at the town's expenſe, provide ſuitable materials, and ſuch as ſhall be convenient and neceſſary to keep the perſon thus committed to work during his or her continuing there, and deliver the ſame to the maſter or keeper of the houſe for that purpoſe. And when any ſtubborn children or ſervants under the immediate care and government of parents or maſters, ſhall be committed to the ſaid houſe; the parent or maſter (if able) ſhall take care and provide ſuch things as may be neceſſary to keep him or her to work and labour during his or her abode in the ſaid houſe. And the perſons committed ſhall be allowed two third parts only what they earn, and the reſidue ſhall be to the uſe of the maſter or keeper of the houſe; unleſs ſuch perſons are maſters or heads of families, then the whole profit of their labour, or ſo much thereof as the Court of Seſſions ſhall order, ſhall be for the relief and ſupport of ſuch perſons and their families. And if any perſon committed as aforeſaid, ſhall be unable to work, or be weak and ſick, or the profits of whoſe work ſhall not be ſufficient for ſupporting him or her,

Selectmen to provide materials for keeping ſuch perſons at work.

Parents & maſters to provide materials for their children and ſervants.

Appropriation of their earnings.

When ſick or unable to work.

her, then to be comfortably provided for and taken care of by the maſter of the ſame houſe, who ſhall be reimburſed the ſame by the parent, maſter, town, or the government, who are by law obliged to maintain and ſupport ſuch perſons when unable to ſupport themſelves, as the caſe may require.

Maſters of ſuch houſes ſhall have a reaſonable allowance for their ſervice, &c.

IV. *And be it further enacted by the authority aforeſaid,* That the maſter of the ſaid houſe of correction ſhall for his care, labour and ſervice in looking after the ſeveral perſons that ſhall from time to time be committed to his care and cuſtody, over and above one third part of their neat earnings, have ſuch reaſonable allowance made him as the Juſtices in Seſſion ſhall order and direct to be paid him by the parent or maſter of ſuch as are under their immediate care and cuſtody, otherwiſe by the town to which ſuch perſons belong, if within this government, or at the charge of the government if they belong to no particular town within it. And the maſter or keeper of every ſuch houſe ſhall keep an exact account of all profits and earnings that ſhall ariſe from the labour of all ſuch as ſhall be committed unto his care and cuſtody, as well as the particular time of their commitment and liberation, and preſent the ſame account (upon oath if required) unto the Juſtices of the Peace, for the ſame county, annually, and alſo whenever he ſhall by them be thereupon directed, and in default thereof may be amerced by the ſaid Juſtices in their ſeſſions, not exceeding *one hundred pounds.*

Proviſo, when any perſon ſhall apply for a diſcharge from ſuch houſe.

Provided nevertheleſs, That whenever any perſon committed as aforeſaid, ſhall apply to the maſter of the ſaid houſe, for a diſcharge therefrom, the ſaid maſter ſhall ſignify the ſame to the overſeers of the poor of the town in which ſuch houſe of correction ſhall be, or to the overſeers of the poor of ſuch town as the perſon ſo committed ſhall belong to, and the major part of either of the overſeers of the poor aforeſaid, upon its being made to appear to them that the ends of ſuch commitment have been anſwered, are hereby empowered to iſſue their order to the maſter of ſuch houſe of correction to diſcharge the ſaid perſon from his or her ſaid confinement, the charges ariſing therefrom being firſt paid in manner as is herein before provided, and the ſaid maſter is hereby required to diſcharge him or her accordingly.

No African or Negro, not a citizen of one of the United States ſhall be ſuffered to tarry within this Commonwealth.

V. *Be it further enacted by the authority aforeſaid,* That no perſon being an African or Negro, other than a ſubject of the Emperour of *Morocco,* or a citizen of ſome one of the United States (to be evidenced by a certificate from the Secretary of the State of which he ſhall be a citizen) ſhall tarry within this Commonwealth, for a longer time than two months, and upon complaint made to any Juſtice of the Peace within this Commonwealth, that any ſuch perſon has been within the ſame more than two months, the ſaid Juſtice ſhall order the ſaid perſon to depart out of this Commonwealth, and in caſe that the ſaid African or Negro ſhall not depart as aforeſaid, any Juſtice of the Peace within this Commonwealth, upon complaint and proof made that ſuch perſon has continued within this Commonwealth ten days after notice given him or her to depart as aforeſaid, ſhall commit the ſaid perſon to any houſe of correction

within

within the county, there to be kept to hard labour agreeable to the rules and orders of the ſaid houſe, until the Seſſions of the Peace, next to be holden within and for the ſaid county; and the maſter of the ſaid houſe of correction is hereby required and directed to tranſmit an atteſted copy of the warrant of commitment to the ſaid Court, on the firſt day of theirſaid ſeſſion, and if upon trial at the ſaid Court, it ſhall be made to appear that the ſaid perſon has thus continued within the Commonwealth contrary to the tenor of this act, he or ſhe ſhall be whipped not exceeding ten ſtripes, and ordered to depart out of this Commonwealth within ten days; and if he or ſhe ſhall not ſo depart, the ſame proceſs ſhall be had and puniſhment inflicted, and ſo *toties quoties*.

In caſe they do not depart.

Puniſhment.

[This act paſſed *March* 26, 1788.]

An Act to prevent Routs, Riots, and tumultuous Aſſemblies, and the evil Conſequences thereof.

WHEREAS the proviſion already made by law, for the preventing Routs, Riots and tumultuous Aſſemblies, and the evil conſequences thereof, has been found inſufficient:

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That from and after the publication of this act, if any perſons to the number of twelve, or more, being armed with clubs, or other weapons; or if any number of perſons, conſiſting of thirty or more, ſhall be unlawfully, routouſly, riotouſly or tumultuouſly aſſembled, any Juſtice of the Peace, ſheriff or deputy-ſheriff of the county, or conſtable of the town, ſhall among the rioters, or as near to them as he can ſafely come, command ſilence, while proclamation is making, and ſhall openly make proclamation in theſe or the like words:

Proclamation to be made among rioters.

Commonwealth of *Maſſachuſetts*.

BY virtue of an act of this Commonwealth, made and paſſed in the year of our LORD, one thouſand ſeven hundred and eighty-ſix, entitled, "An Act for ſuppreſſing routs, riots, and tumultuous aſſemblies, and the evil conſequences thereof," I am directed to charge and command, and I do accordingly charge and commad all perſons, being here aſſembled, immediately to diſperſe themſelves, and peaceably to depart to their habitations, or to their lawful buſineſs, upon the pains inflicted by the ſaid act.

GOD ſave the COMMONWEALTH.

Form.

And if ſuch perſons, aſſembled as aforeſaid, ſhall not diſperſe themſelves within one hour after proclamation made, or attempted to be made, as aforeſaid, it ſhall be lawful for every ſuch officer to command ſufficient aid, and he ſhall ſeize ſuch perſons, who ſhall be had before a Juſtice of the Peace; and the aforeſaid Juſtice of

If the perſons aſſembled do not diſperſe, officers empowered, &c.

the Peace, ſheriff or deputy-ſheriff, is hereby further empowered, to require the aid of a ſufficient number of perſons in arms, if any of the perſons aſſembled as aforeſaid ſhall appear armed: And if any ſuch perſon or perſons ſhall be killed or wounded, by reaſon of his or their reſiſting the perſons endeavouring to diſperſe or ſeize them, the ſaid Juſtice, ſheriff, deputy-ſheriff, conſtable and their aſſiſtants, ſhall be indemnified and held guiltleſs.

Penalty for refuſing to aſſiſt the ſheriff or other officer.

II. *And be it further enacted*, That if any perſon, being commanded by ſuch Juſtice, ſheriff, deputy-ſheriff or conſtable, as aforeſaid, ſhall refuſe or neglect to afford the aſſiſtance required, and ſhall be convicted thereof upon the oath of either of the ſaid officers, ſo commanding, or other legal evidence, he ſhall forfeit and pay a ſum not leſs than *forty ſhillings*, nor exceeding *ten pounds*, to be recovered by indictment, or preſentment, before the Supreme Judicial Court, or any Court of General Seſſions of the Peace, according to the aggravation of the offence; to be paid into the public treaſury, for the uſe of the Commonwealth.

Puniſhment for unlawfully continuing together one hour after proclamation made.

III. *And be it further enacted*, That all perſons, who for the ſpace of one hour after proclamation made, or attempted to be made, as aforeſaid, ſhall unlawfully, routouſly, riotouſly and tumultuouſly continue together, or ſhall wilfully let, or hinder, any ſuch officer, who ſhall be known, or ſhall openly declare himſelf to be ſuch, from making the ſaid proclamation, ſhall forfeit all their lands, tenements, goods and chattels, to this Commonwealth, or ſuch part thereof as ſhall be adjudged by the Juſtices, before whom ſuch offence ſhall be tried, to be applied towards the ſupport of the government of this Commonwealth; and ſhall be whipt thirty-nine ſtripes on the naked back, at the publick whipping-poſt, and ſuffer impriſonment for a term not exceeding twelve months, nor leſs than ſix months; and once every three months during the ſaid impriſonment, receive the ſame number of ſtripes on the naked back, at the publick whipping-poſt as aforeſaid. And if any ſuch perſon or perſons, ſo riotouſly aſſembled, ſhall demoliſh or pull down, or begin to demoliſh or pull down, any dwelling-houſe, or other houſe, or parcel thereof; any houſe, built for public uſes; any barn, mill, malt-houſe, ſtore-houſe, ſhop or ſhip, he or they ſhall ſuffer the ſame pains and penalties, as are before provided in this act.

Proviſo.

Provided always, That where there ſhall appear any circumſtances, to mitigate or alleviate any of the offences againſt this act, in the judgment of the Court, before which ſuch offence ſhall be tried, it ſhall and may be lawful, for the Juſtices of ſuch Court, to abate the whole of the puniſhment of whipping, or ſuch part thereof, as they ſhall judge proper; any thing in this act to the contrary notwithſtanding.

Times when this act ſhall be read.

IV. *And be it further enacted*, That this act ſhall be read, at the opening of every Court of General Seſſions of the Peace, by the Clerk of the ſaid Court, and at the anniverſary meeting of each town, within this Commonwealth, by the town-clerk thereof, in *March* or *April*, annually: And no perſon ſhall be proſecuted, for

any

any offence contrary to this act, unleſs proſecution be commenced within twelve months after the offence committed.

[This act paſſed *October* 28, 1786.]

An Act for the more ſpeedy and effectual Suppreſſion of Tumults and Inſurrections in the Commonwealth.

WHEREAS in a free government, where the people have a right to bear arms for the common defence, and the military power is held in ſubordination to the civil authority, it is neceſſary for the ſafety of the State, that the virtuous citizens thereof ſhould hold themſelves in readineſs, and when called upon, ſhould exert their efforts to ſupport the civil government, and oppoſe the attempts of factious and wicked men, who may wiſh to ſubvert the laws and conſtitution of their country; and whereas a delay in ſuppreſſing tumults and inſurrections, in diverſe counties of the State, has been attended with alarming conſequences, ſuch tumults and inſurrections having lately grown into the unnatural and dangerous rebellion, which now exiſts in the Commonwealth: for the prevention of like conſequences in future: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That whenever an inſurrection ſhall have taken place in either of the counties of the Commonwealth, to obſtruct the courſe of juſtice, or the due execution of the laws, or there is reaſon to apprehend that a dangerous inſurrection for ſuch purpoſes will be excited, it ſhall be the duty of the civil officers, in ſuch county, as well the ſheriff, as the Juſtices of the ſeveral Courts of Judicature, within ſuch county, immediately to give information thereof to his Excellency the Governour, for the time being; who is hereby requeſted, thereupon, to exerciſe the powers veſted in him by the conſtitution, and to give immediate directions to the Major-General, or commanding officer of the diviſion, where ſuch inſurrection exiſts or is apprehended, and if he ſhall think it neceſſary, to the Major-General or commanding officer of any other diviſion or diviſions, to detach from his or their diviſion or diviſions, ſuch part of the militia for the ſupport of the civil authority, as he ſhall judge fully adequate for that purpoſe, and for the apprehenſion and ſafe keeping of thoſe who may be concerned in ſuch inſurrection. Duty of civil officers in caſe of an inſurrection. Governour requeſted to exerciſe the powers veſted in him by the conſtitution.

II. *And be it further enacted by the authority aforeſaid,* That if in the opinion of the ſheriff, or any two of the Juſtices, either of the Supreme Judicial Court, or the Court of Common Pleas, in any of the counties of this Commonwealth, it ſhall be neceſſary for the ſuppreſſion of any inſurrection exiſting or apprehended as aforeſaid, in ſuch county, that a force ſhall be inſtantly raiſed and called forth for that purpoſe; and if by reaſon of diſtance, the neceſſary aid cannot be obtained by order of the Commander in Chief, it ſhall If in the opinion of the ſheriff or any two Juſtices it is neceſſary a force ſhould be inſtantly raiſed, they ſhall certify the ſame to the Major-General, &c.

ſhall be the duty of ſuch ſheriff or Juſtices, to certify the ſame under his or their hand, to the Major-General or commanding officer of the diviſion, wherein ſuch county lies, or to the commanding officer of ſome regiment or corps in the vicinity, and to requeſt him or them to detach the whole, or ſuch number of the militia under the command of ſuch officer, for the ſupport of the civil authority, as the ſaid Juſtices or ſheriff may think neceſſary, to defeat the purpoſes of ſuch inſurgents, and to apprehend and ſafely keep them for trial, and as ſoon as may be to give notice of ſuch application to the Commander in Chief, that he may take the neceſſary orders thereupon; and it ſhall be the duty of ſuch Major-General or commanding officer, upon ſuch requeſt being made, to detach ſuch number of the militia as ſhall be requeſted as aforeſaid, armed and equiped according to law; and the militia ſo detached and collected ſhall afford their aſſiſtance to, and be under the direction of the civil officer or magiſtrate, unleſs in caſe of rebellion declared by the legiſlature.

Duty of ſuch Major-General.

III. *And be it further enacted by the authority aforeſaid*, That if any commiſſioned officer of the militia, ſhall refuſe, or wilfully neglect to execute any orders, he may receive from his ſuperior officer, to make a detachment from the corps under his command, or to march for the ſupport of the civil authority, or the ſuppreſſion of any inſurrection as aforeſaid, in addition to the puniſhment which may be inflicted by virtue of any act for regulating the militia, if convicted thereof before the Juſtices of the Supreme Judicial Court, he ſhall be ſubject to be fined in a ſum not exceeding *fifty pounds*, and to be adjudged incapable of ſuſtaining any office in this Commonwealth, for a term not exceeding ten years; to either or both of the ſaid penalties, according to the aggravation of the offence, and circumſtances of the offender, as to the Juſtices of the ſaid Court ſhall ſeem meet.

Puniſhment, if officers of the militia refuſe to execute orders.

IV. *And be it further enacted*, That if any perſon, whether non-commiſſioned officer or private, and belonging either to the train band or the alarm liſt, who ſhall be detached or ordered to march for the ſupport of the civil authority, or the ſuppreſſion of any inſurrection, exiſting or apprehended as aforeſaid, ſhall refuſe or neglect to march, armed and equipped, in the manner, and at the time, which the officer by whom he ſhall be detached ſhall direct, or ſhall deſert or leave the ſervice before he ſhall be regularly diſcharged, if convicted thereof before the Juſtices of the Supreme Judicial Court, he ſhall be ſubject to be fined at the diſcretion of the ſaid Court, in a ſum not exceeding *ten pounds*.

Penalty if non-commiſſioned officers or privates refuſe or neglect to march &c.

V. *And be it further enacted by the authority aforeſaid*, That if any perſon in publick or private diſcourſe or converſation, or by any ways or means, ſhall diſſuade or endeavour to prevent any military officer from performing the duty required of him by this act, or any perſon or perſons detached or ordered to march for the purpoſe aforeſaid, from marching to the place of rendezvous, or from continuing in the ſervice until regularly diſcharged, each perſon ſo offending, being convicted thereof as aforeſaid, ſhall pay a fine to the

Penalty for diſſuading any military officer, &c from the duty required of him.

the uſe of the Commonwealth, not exceeding *fifty pounds*, and ſhall recognize for his good behaviour for a term not exceeding three years.

VI. *And be it further enacted by the authority aforeſaid*, That compenſation ſhall be made to ſuch part of the militia, as may at any time hereafter be detached or employed agreeably to, and for the purpoſes mentioned in this act.

Compenſation ſhall be made to the militia.

[This act paſſed *February* 20, 1787.]

An Act directing and regulating the Proceſs of Outlawry.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That when any perſon that now is charged, or hereafter ſhall ſtand charged of any criminal offence before the Supreme Judicial Court of this Government, by the indictment or preſentment of a Grand-Jury, whether the ſame indictment or preſentment be originally found in that Court, or removed thither from any inferior juriſdiction, by appeal, or writ of certiorari, ſhall abſcond to avoid anſwering or abiding and performing the judgment that may be given thereon, whether ſuch abſconding be before or after the jury ſhall indict or preſent the offender, a writ ſhall iſſue to the ſheriff of the county where ſuch offender was an inhabitant or reſident at the time of finding the ſame bill, directing him to make known unto ſuch offender, that unleſs he ſhall appear on the firſt day of the next ſitting of the ſaid Supreme Judicial Court, and there traverſe the ſame charge, and abide the judgment that may be given thereon, or appear and give ſecurity therefor, by way of recognizance, as the ſaid Court ſhall order, ſuch perſon will then and there be declared an outlaw, and be ſubjected to all the penalties and diſabilities in this act declared to be incident to a perſon under ſentence of outlawry. And the mode of executing the ſaid writ of *ſcire facias*, ſhall be by leaving an authenticated copy thereof, certified by the ſheriff, at the offender's dwelling-houſe, or laſt place of abode, ſixty days at the leaſt before the ſame proceſs ſhall be returnable, and ſhall cauſe an abſtract or notification of the ſubject matter in the ſame writ mentioned, ſixty days before the return day at the leaſt, to be printed in one of the moſt publick weekly news-papers, and to be continued five ſeveral weeks incluſive, and ſhall cauſe him to be publickly called in every Court of General Seſſions of the Peace in his county that ſhall be holden while the ſame proceſs ſhall be in his cuſtody; which writ of *ſcire facias* being ſerved and returned in manner aforeſaid, and filed in Court, ſhall be entered on the docket, and the party againſt whom the ſame iſſued, after having been publickly called in the ſaid Supreme Judicial Court to appear and anſwer the charge alledged againſt him as aforeſaid; if he ſhall not appear upon ſuch notice and proclamation, his default ſhall be recorded, and ſuch offender

Perſons abſconding who ſhall ſtand charged of criminal offences before the Supreme Judicial Court by indictment.

A writ to be iſſued to the ſheriff of the county where ſuch offender was an inhabitant, &c.

To be declared an outlaw.

The mode of executing the writ of ſcire facias.

may by the ſame Court be declared an outlaw, without any other act or ceremony: Any former law, uſage or cuſtom to the contrary notwithſtanding.

Proviſo. *Provided always*, It ſhall be in the power of the ſaid Court when the offence charged ſhall be by law bailable, to continue the ſame *ſcire facias*, or ſuſpend paſſing judgment of outlawry thereon, until the next or ſome ſucceeding term, in caſe ſufficient bail ſhall be given for the offender's anſwering and abiding the judgment of the ſaid Court thereon. And that it may regularly and certainly be determined when a perſon may be ſaid to have abſconded to eſcape puniſhment:

What evidence ſhall be ſufficient when perſons after having appeared and plead to an indictment, who ſhall depart without leave of the Court, &c.

II. *Be it further enacted*, That any perſon, after having appeared and plead to an indictment, or preſentment, who ſhall have departed without leave of the Court, or ſhall have broken goal after commitment upon and before conviction on the charge alledged in the bill, or ſhall fail or neglect to appear and anſwer according to the tenor of a recognizance regularly taken for that purpoſe, or when the ſheriff of the ſame county whereof the offender was an inhabitant or reſident at the time of his commiting the offence for which he ſhall ſtand indicted, or his deputy, ſhall make return upon a capias iſſued in conſequence of the bill, wherein the term of four months at the leaſt ſhall have elapſed between the iſſuing the capias and the return day thereof, *That after making diligent ſearch and inquiry after ſuch offender he could not find him in his precinct*, ſhall be deemed and taken as ſufficient evidence of the abſconding of ſuch perſon, within the intent of this act.

III. *And be it further enacted*, That a capias and an alias capias iſſued from the Court of General Seſſions of the Peace, on a bill of indictment, or preſentment there found, wherein fifty days at the leaſt ſhall have elapſed between the iſſuing and return of the ſame writs reſpectively, and returned by the proper officer, that after diligent ſearch and enquiry after ſuch offender, he could not find him in his precinct (before the removal of the record into the Supreme Judicial Court) ſhall render the iſſuing a like proceſs in the Supreme Judicial Court before *ſcire facias ut legatum* unneceſſary.

Where a capias ſhall iſſue from the Supreme Judicial Court for the apprehending of an offender.

IV. *And be it further enacted*, That where a capias ſhall iſſue from the Supreme Judicial Court to apprehend an offender on a bill of indictment or preſentment, in any county where the ſaid Court ſhall be held but once a year, the ſame capias may be made returnable to ſome ſeſſion of the ſaid Court in ſome other county, at the expiration of five or ſix months, if the ſaid Court ſhall ſo order, to the end *ſcire facias ut legatum* may timely iſſue returnable to the next term, if the offender ſhould not be taken on the capias.

Perſons againſt whom judgment of outlwary ſhall b given, diſabled from bringing any action or ſuit in any law Court, excepting.

V. *And be it further enacted*, That all perſons againſt whom judgment of outlawry ſhall be given, ſhall during the time the ſame judgment ſhall continue in force, be, and hereby are diſabled from bringing or maintaining in their own right, any civil action or ſuit in any Court of law or equity within this government, excepting a writ of errour for reverſing his outlawry, and ſhall be under ſuch other diſabilities and diſqualifications in civil ſociety as a perſon convicted

victed and ſentenced for the offence charged in the bill upon which he may be outlawed: and in all caſes where a greater forfeiture does not by law accrue to the Commonwealth upon a conviction and judgment on ſuch bill of indictment, ſhall forfeit the iſſues and profits of all his real eſtate during the life of the outlaw, in caſe the judgment of outlawry ſhall ſo long remain in force, and be further liable to be apprehended upon capias *ut legatum*, and ſentenced in the ſame manner as if he was convicted by a Jury, of the charge alledged in the bill.

The real eſtate of perſons outlawed to be liable to reſpond the judgment given relating to fines and coſts.

VI. *And be it further enacted*, That the real eſtate of every perſon outlawed ſhall be held liable and be bound from the time of iſſuing the *ſcire facias ut legatum*, to reſpond the judgment that ſhall be given on the indictment or preſentment, ſo far as relates to the fine and coſt.

VII. *And be it further enacted by the authority aforeſaid*, That the lands and tenements of all perſons recognizing to the uſe of this government before any authority duly authorized and empowered to take the ſame, are, and ſhall be liable to reſpond the ſum mentioned in the ſame recognizance, from the time the ſame is taken and acknowledged, notwithſtanding any transfer or alienation thereof.

Offenders outlawed upon their appearing in Court and confeſſing the charge and receiving ſentence to be acquitted.

VIII. *And be it further enacted*, That every offender that may be outlawed, upon his appearing in open Court, and confeſſing the charge, and receiving ſentence thereon, or appearing and traverſing the charge, ſhall be acquitted by a Jury, or on demurrer, or any other plea, the ſame ſhall be adjudged inſufficient in law to compel the perſon accuſed to anſwer thereunto, or ſupport a judgment thereon: in every ſuch caſe the proceeding ſhall be conſtrued to operate as a full and effectual reverſal of the judgment of outlawry, as though a formal reverſal had been given upon a writ of errour expreſsly brought for that purpoſe. *Provided* the appearance upon which ſuch acquittal ſhall be given ſhall be voluntary and without compulſion, and within one year and a day after judgment of outlawry ſhall be pronounced, and the coſt accruing on the proceſs of outlawry ſhall be firſt ſatisfied and paid. Proviſo.

[This act paſſed *October* 2, 1782.]

An Act for apprehending and ſending for Trial Perſons charged with having committed Crimes in ſome other States; and to authorize the Officers of Juſtice of the other States to continue the Execution of their Precepts within this State, when neceſſary.

Preamble.

WHEREAS it will tend to maintain the union and harmony of the United States of America, *that perſons ſtanding charged with the commiſſion of crimes in one of ſaid States, and eſcaping into another, ſhould be apprehended, ſecured and ſent for trial to the State where the charge ariſes:*

I.

I. *Therefore be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That when any perſon ſhall ſtand charged with the commiſſion of any crime in any other of ſaid States, and ſhall eſcape into this Commonwealth, it ſhall be lawful for any Juſtice of the Peace in any county where the offender may be, upon application made for that purpoſe, to apprehend ſuch offender by warrant, and cauſe him to be brought before himſelf, or ſome other Juſtice of the Peace of the county for examination; and it ſhall be lawful for any Juſtice, upon ſuch examination (if he ſhall think proper) to commit ſuch offender to goal or ſend him by warrant to the confines of the State where the offence was committed, if an adjoining one, and there deliver him to a proper officer; or if the offence was committed in a more diſtant State, to ſome officer in an adjoining one, if there be any empowered to receive, and convey him to ſuch more diſtant State, in order for trial. And when any offender ſhall be apprehended in another State, and it may be neceſſary to carry him through this Commonwealth, in order to his being conveyed to the State where the offence was committed, it ſhall be lawful for any Juſtice of the Peace in any county, when applied to, to order ſuch offender to be ſo carried by warrant; and all warrants for ſending offenders to the confines of, or for carrying them through this Commonwealth as aforeſaid, may be directed to, and ſhall be executed by, the ſheriffs or their deputies, of the ſeveral counties through which it may be neceſſary to ſend or carry the offender, or to any or either of the conſtables of the ſeveral towns in ſuch counties reſpectively: all which officers ſhall be directed to proceed with ſuch offender or offenders, to the confines of the next adjoining county, and there deliver him or them to ſome proper officer of ſuch county; which proceſs ſhall be repeated and continued until ſuch offender or offenders ſhall have been carried through this Commonwealth, and conveyed to the next adjoining State.

Perſons charged with crimes in other ſtates—Juſtices to grant warrants to apprehend them.

Juſtices authoriſed to commit ſuch offenders, &c.

Warrants to be executed by the ſheriffs or their deputies.

And whereas the publick roads leading from many of the towns in this government and the towns of the neighbouring governments of *New-Hampſhire, Connecticut, Rhode-Iſland* and *New-York*, are ſo intermixed, that the officers of juſtice of the ſaid neighbouring governments, in the execution of their office, are often times obliged (the road or direct way ſo leading) to paſs, and even to convey priſoners through towns or lands belonging to this government, and without the juriſdiction of ſuch officer of juſtice, whereby diſputes, difficulties or inconveniencies will ariſe as well to the prejudice of the publick, as to the damage of private perſons, unleſs ſome proviſion is made in that behalf:

Preamble.

II. *Be it therefore enacted,* That the ſheriffs, deputy ſheriffs, conſtables, or other officers of juſtice, of the neighbouring governments, with their aſſiſtants, in the execution of any writs, warrants, or other proceſs, iſſuing from, and returnable to, Courts in their reſpective governments, may and ſhall have full liberty, power and authority, to paſs and re-paſs, and alſo to convey ſuch perſons, or things, as they may have in their cuſtody, by virtue of any writ or warrant as aforeſaid, in or by any of the roads or ways lying in

Officers of juſtice of the neighbouring governments in the execution of any writs, &c. to have liberty to paſs and repaſs.

or

or leading through any towns or lands of the government, in as full, free, and ample manner as the officers of juſtice of this government do uſe and exerciſe in the diſcharge of their duty and office: And all perſons inſulting or obſtructing ſuch officers of juſtice of the neighbouring governments, in ſuch execution of their office, as they are paſſing through any of the roads or lands of this government, ſhall be ſubject to the ſame pains and penalties as perſons would by law be ſubject unto for inſulting or obſtructing ſimilar officers of juſtice of this government, in the due execution of their office.

[This act paſſed *November* 7, 1782.]

An Act for the Suppreſſion of Lotteries.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any perſon or perſons ſhall undertake, or ſet up any lottery for money, or expoſe to ſale, or diſpoſe of any eſtate, real or perſonal, by way of Lottery within this Government, whether the eſtate ſo propoſed to be diſpoſed of, be in this Commonwealth, or any other place, every perſon ſo offending ſhall forfeit and pay the ſum of *two hundred pounds*. Penalty for ſetting up any lottery.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon or perſons ſhall be aiding or aſſiſting in any ſuch Lottery, by printing, writing, or in any other manner publiſhing an account thereof, or where the tickets may be had, every ſuch perſon ſhall forfeit and pay the ſum of *one hundred pounds*. Penalty for aiding and aſſiſting in any lottery.

III. *And be it further enacted by the authority aforeſaid,* That every perſon who ſhall ſell, give, or otherwiſe diſpoſe of any ſuch lottery ticket, ſhall forfeit and pay the ſum of *fifty pounds*, for each ticket ſo ſold, given or diſpoſed of; and every perſon who ſhall receive or purchaſe any ſuch lottery ticket, ſhall forfeit and pay the ſum of *twenty pounds*, for every ticket ſo received, or purchaſed —The ſaid ſeveral forfeitures to be and enure, one moiety to the uſe of this government, and the other moiety to the uſe of him, or them, that will ſue for the ſame, by action of debt in any Court of Common Pleas, within the government. Penalty for diſpoſing of, receiving or purchaſing any ticket.

Provided nevertheleſs, That nothing in this act ſhall be conſtrued to extend to any Lottery, or the tickets of any Lottery, eſtabliſhed, permitted or allowed, or that hereafter may be eſtabliſhed or allowed by the Legiſlature of this State, or of any of the United States, or by the United States in Congreſs aſſembled. Proviſo.

[This act paſſed *November* 8, 1785.]

An Act for the reſtraining the taking of exceſſive Uſury.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That no perſon or perſons upon any contract hereafter made, ſhall take directly or indirectly for loan of any monies, wares, merchandize, or other commodities whatſoever, above the value of *ſix pounds*, for the forbearance of *one hundred pounds* for a year, and ſo after that rate for a greater or leſſer ſum, or for a longer or ſhorter time; and that all bonds, contracts, mortgages, and aſſurances whatſoever, made for the payment of any principal or money lent, or covenanted to be lent, upon or for uſury, whereupon or whereby there ſhall be reſerved or taken above the rate of *ſix pounds* in the *hundred* as aforeſaid, ſhall be utterly void; and that all and every perſon and perſons who ſhall upon any contract, take, accept, and receive by way and means of any corrupt bargain, loan, or exchange, or by covin or deceitful conveyance, or by any other ways or means whatſoever, for the forbearing or giving day of payment for one whole year, of and for their money, or other thing or things, above the ſum of *ſix pounds*, for the forbearing of *one hundred pounds* a year, and ſo after that rate for a greater or leſſer ſum, or for a longer or ſhorter time, ſhall forfeit and loſe for every ſuch offence the full value of the goods and monies, or other things ſo lent, exchanged, bargained, ſold or agreed for, to be recovered by indictment, or action of the caſe, one moiety thereof to the uſe of this Commonwealth, and the other moiety to him or them who proſecutes, complains, or ſues for the ſame, any cuſtom, uſage, or law to the contrary notwithſtanding.

Six per cent. intereſt per annum for loan of money.

Penalty for contracting for more.

II. *And be it further enacted,* That when and ſo often as any perſon or perſons are or ſhall be ſued on any bond, contract, mortgage, or aſſurance whatſoever, for the payment of any monies, wares, merchandize, or other commodities whatſoever, whereby or wherein any ſum is given, ſecured, or taken for the forbearing, or giving day of payment for a longer or ſhorter time; then and in ſuch caſe, (the creditor being alive) if the debtor or debtors ſhall come into Court where the ſaid cauſe is to be tried, and ſhall offer to make oath, and if required by the Court, ſhall actually ſwear to the ſame, that there is taken, reſerved, or ſecured by ſuch bond, contract, or aſſurance, above the rate of *ſix pounds* in the *hundred*, for the forbearance of the property actually lent or ſold, whether it be in money or other things, for one year, and ſo after that rate for a greater or leſſer ſum, or for a longer or ſhorter time, or that the creditor or creditors have received more than at the rate of *ſix pounds* in the *hundred*, for the loan or forbearance of the monies or other things actually lent or ſold; ſuch bond, contract, mortgage, or aſſurance ſhall be utterly void, and the debtor fully and abſolutely diſcharged from the payment of any monies, goods, or other things lent, exchanged, bargained, ſold, or agreed for as aforeſaid, unleſs the

Proof to be made by the debtor's oath.

the creditor or creditors will ſwear that he, ſhe, or they have not directly or indirectly, wittingly taken or received more than after the rate of *ſix pounds* in the *hundred*, for forbearance or giving day of payment; and that by ſuch bond, contract, mortgage, or aſſurance, there is not reſerved, ſecured, or taken, more than after the rate of ſix *per cent.* for forbearance or giving day of payment for the goods, monies, or other things actually lent or ſold, any law, uſage, or cuſtom to the contrary notwithſtanding.

Unleſs the creditor will diſcharge himſelf upon oath.

Provided, Nothing in this act ſhall extend to the letting of cattle, or other uſages of the like nature in practice amongſt farmers, or maritime contracts among merchants, as bottomry, inſurance, or courſe of exchange, as hath been heretofore accuſtomed.

Proviſo.

[This act paſſed *March* 16, 1784.]

An Act to prevent the Slave-Trade, and for granting Relief to the Families of ſuch unhappy Perſons as may be kidnapped or decoyed away from this Commonwealth.

WHEREAS by the African trade for ſlaves, the lives and liberties of many innocent perſons have been from time to time ſacrificed to the luſt of gain: And whereas ſome perſons reſiding in this Commonwealth may be ſo regardleſs of the rights of human kind, as to be concerned in that unrighteous commerce:

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That no citizen of this Commonwealth, or other perſon reſiding within the ſame, ſhall for himſelf, or any other perſon whatſoever, either as maſter, factor, ſupercargo, owner or hirer, in whole or in part, of any veſſel, directly or indirectly, import or tranſport, or buy or ſell, or receive on board, his or their veſſel, with intent to cauſe to be imported or tranſported, any of the inhabitants of any State or Kingdom, in that part of the world called *Africa*, as ſlaves, or as ſervants for term of years; and that every citizen, inhabitant or reſident as aforeſaid, who ſhall directly or indirectly, receive on board his or their veſſel with intent to import or tranſport, or cauſe to be imported or tranſported, any of the ſaid inhabitants of *Africa*, contrary to the true intent and meaning of this act, and be thereof lawfully convicted, ſhall forfeit and pay the ſum of *fifty pounds*, for every perſon by him or them ſo received on board, with intent to be imported or tranſported; and the ſum of *two hundred pounds*, for every veſſel fitted out with intent to, and that actually ſhall be employed in the importation or tranſportation aforeſaid, to be recovered by action of debt, in any Court within this Commonwealth, proper to try the ſame; the one moiety thereof to the uſe of this Commonwealth, and the other moiety to the perſon who ſhall proſecute for and recover the ſame.

No perſon to import, tranſport, buy or ſell any Africans as ſlaves.

Penalty.

Penalty for veſſels fitted out.

II.

Insurance on said veſſels, void.

II. *And be it further enacted by the authority aforeſaid*, That all inſurance which ſhall be made within this State, on any veſſel fitted out with intention as aforeſaid, and having on board ſlaves in order to be tranſported from *Africa*, as aforeſaid, or upon any ſlaves ſo ſhipped on board of any veſſel for tranſportation, ſhall be void, and of no effect; and this act may be given in evidence under the general iſſue, in any ſuit or action commenced for the recovery of inſurance ſo made.

Inhabitants carried off.

And whereas divers peaceable inhabitants of this Commonwealth, or reſidents therein, have been privately carried off by force, or decoyed away under various pretences, by evil minded perſons, and with a probable intention of being ſold as ſlaves without the ſame; and although ſufficient proviſion is made for public juſtice, in ſuch caſe, by the common law, and an act entitled, "an act eſtabliſhing the right to and the form of the writ *de homine replegiando*," yet no proviſion is made for bringing actions for damages by the friends or families of any inhabitant who may be ſo carried off, or decoyed away during his or her life time:

When inhabitants are carried off, actions of damage may be brought by their friends.

III. *Be it therefore enacted by the authority aforeſaid*, That when any inhabitant or reſident of this Commonwealth, ſhall be ſo carried off or decoyed away, it ſhall be lawful for any friend of ſuch injured inhabitant or reſident, to bring forward and proſecute to final judgment and execution, before any Court of law proper to try the ſame, any action for damages againſt any perſon concerned in decoying or carrying off ſuch inhabitant or reſident, in the name of ſuch inhabitant or reſident, and in the ſame manner, and to the ſame effect, as if thereunto fully authorized by letter of attorney from ſuch inhabitant or reſident for that purpoſe.

Provided bonds are given.

Provided neverthelefs, ſuch friend, proſecuting as aforeſaid, ſhall firſt give to the Judge of Probate for the county wherein ſuch injured party laſt dwelt, good and ſufficient bond with ſureties to the ſatisfaction of ſuch Judge of Probate, conditioned that ſuch proſecutor ſhall pay the monies that he may recover in damages as aforeſaid, to the ſaid injured party, on his or her return to this Commonwealth, if that ſhall happen by the time when ſuch execution is ſatisfied, and if not, ſhall apply ſuch monies to the uſe and maintenance of the wife, children or family of the injured party, in proportion, at ſuch periods, and in ſuch way and manner as the ſaid Judge ſhall decree beſt for the intereſt of ſuch wife, children, or family, in the abſence of ſuch injured party:

Proviſo in caſe the defendant is acquitted.

IV. *Provided alſo, and be it further enacted*, That in caſe the defendant who ſhall be proſecuted as is provided in and by this act, ſhall be acquitted by the Court before whom the trial may be, the ſaid Court ſhall not only render up judgment for legal coſts, but for ſuch reaſonable damages as the ſaid defendant hath ſuſtained by ſuch proſecution:

Provided alſo, That this act do not extend to veſſels which have already ſailed, their owners, factors, or commanders, for and during their

their preſent voyage, or to any inſurance that ſhall have been made, previous to the paſſing of the ſame.

[This act paſſed *March* 25, 1788.]

An Act to prevent Gaming for Money, or other Property.

WHEREAS the practice of gaming for money or other property, is not only injurious, in a high degree, to the individuals concerned therein, but alſo in its tendency, ruinous and deſtructive to the State: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all notes, bills, bonds, judgments, mortgages, or other ſecurities or conveyances, whatſoever, given, granted, drawn, entered into, or executed by any perſon or perſons whatſoever, where the whole, or any part of the conſideration of ſuch conveyances or ſecurities ſhall be for any money or other valuable thing whatſoever, won by gaming or playing at cards, dice or any other game or games whatſoever, or by betting on the ſide or hands of any perſon gaming, or for the reimburſing, or repaying any money knowingly lent, or advanced for any gaming or betting, or lent and advanced at the time and place of ſuch play, to any perſon or perſons, ſo gaming or betting, or that ſhall during ſuch play, ſo play or bet, ſhall be void and of no effect; and that where ſuch mortgages, ſecurities, or other conveyances ſhall be of lands, tenements or hereditaments, or ſhall be ſuch as incumber or affect the ſame, ſuch mortgages, ſecurities or other conveyance, ſhall enure, and be to the ſole uſe and benefit of ſuch perſon or perſons, as ſhould, or might have, or be entitled to ſuch lands, tenements or hereditaments, in caſe the ſaid grantor or grantors thereof, or the perſon or perſons ſo incumbering the ſame, had been naturally dead; and that all grants or conveyances to be made for the preventing of ſuch lands, tenements or hereditaments from coming to, or devolving upon ſuch perſon or perſons, hereby intended to enjoy the ſame as aforeſaid, ſhall be deemed fraudulent, void, and of no effect, or purpoſe whatever. Notes, bonds, &c. given for property won by gaming, declared void.

II. *And be it further enacted,* That any perſon or perſons, who ſhall at any time, or ſetting, by playing at cards, dice, or any other game or games whatſoever, or by betting on the ſides or hands of ſuch as do game, loſe to any one or more perſon or perſons, ſo playing or betting, any ſum or ſums of money, or any other valuable thing whatſoever, and ſhall pay or deliver the ſame, or any part thereof, the perſon or perſons ſo loſing and paying or delivering the ſame, ſhall be at liberty to ſue for and recover the money or goods ſo loſt and paid or delivered, or any part thereof, or damages, to the full value of the ſame, from the reſpective winner or winners thereof, with coſts of ſuit, by action to be commenced within three months next after the loſing, paying or delivering the ſame, in which it ſhall Perſons loſing money, &c. by gaming, may ſue for and recover the ſame of the perſon winning, with coſts of ſuit.

be ſufficient for the plaintiff to alledge, in an action of aſſumpſit, that the defendant had received to the plaintiff's uſe the money ſo loſt and paid; and in an action of trover for the goods ſo loſt and delivered, that they came to the hands of the defendant without mentioning in the declaration the particular manner and occaſion of the goods or monies being loſt; and in caſe the perſon or perſons who ſhall loſe ſuch money or other thing as aforeſaid, ſhall not within the time aforeſaid really and truly, without covin or colluſion, ſue and with effect proſecute for the money or other thing ſo by him or them loſt and paid or delivered as aforeſaid, it ſhall and may be lawful to and for any perſon or perſons to ſue for and recover treble the value of the money, goods or chattles, with full coſts of ſuit, by action of debt upon this ſtatute, againſt ſuch winner or winners as aforeſaid, one moiety thereof to the uſe of the perſon or perſons that will ſue for the ſame, and the other moiety to the uſe of the poor of the town where the offence ſhall be committed.

In caſe the perſon loſing ſhall not ſue within three months, it may be lawful for any other perſon to ſue for and recover treble the value.

III. *And be it further enacted*, That any perſon who ſhall be convicted on an indictment of the Grand Jury, before the Court of General Seſſions of the Peace, or the Supreme Judicial Court, of winning at any one time or ſitting, of any perſon or perſons, by gaming or betting as aforeſaid, in money, goods, or chattles, to the value of *twenty ſhillings*, or upwards, and of receiving the ſame, or ſecurity therefor, ſhall beſides forfeiting double the amount or value of the money, goods or chattles ſo won and received, to the poor of the town where the offence is committed, be adjudged incapable of holding, keeping or ſuſtaining, directly or indirectly, any office of honour or profit in this Commonwealth, for the term of twelve months from the time of ſuch conviction: *Provided always*, ſuch indictment be found within eighteen months next after the offence committed.

Perſons convicted of winning money, &c.

Forfeiture.

IV. *And be it further enacted*, That in ſuits hereafter brought by the perſon loſing money, goods or chattles againſt the perſon winning the ſame, when it ſhall appear from the declaration, that the goods ſaid to be loſt, came to the hands of the defendant, by gaming, or the money he had received was by gaming, then, and in ſuch caſe, if the plaintiff ſhall offer to make oath, and if required by the Court where the trial is, ſhall actually ſwear to the loſing the money, goods or chattles by gaming with the defendant, at the time and place alledged, judgment ſhall be rendered for the plaintiff to recover damage, to the amount of the goods or money the defendant has received of the plaintiff by gaming, with coſts of ſuit, unleſs the defendant will ſwear that he did not receive of the plaintiff the money, goods or chattles for which he is ſued, or any part of them, by gaming; and when the defendant diſcharges himſelf on oath as aforeſaid, he ſhall recover of the plaintiff his reaſonable coſts.

Suits brought againſt perſons winning, how conducted.

Proviſo. *Provided nevertheleſs*, That nothing in this act ſhall be ſo conſtrued as to prevent the ſupporting and proving any declarations on the aforeſaid actions, in the ſame manner as other declarations are proved, but it ſhall be conſidered as optional with the plaintiff either to proceed in proving his declaration in the way ſpecially provided in this act, or in the ſame way other declarations are proved; any thing herein to the contrary notwithſtanding.

V.

V. *And be it further enacted,* That if any perſon ſhall play at cards, dice or billiards, or with any other implements uſed in gaming, in any tavern or houſe of entertainment, or place licenced for retailing ſpirituous liquors, or in any of the out-houſes, yards, gardens or appendages of the ſame, or ſhall in any of the houſes or licenced places aforeſaid, expoſe to view any of the implements aforeſaid, or ſhall be ſeen ſitting at any table therein with any of the ſaid implements before him, and ſhall be convicted thereof before any Juſtice of the Peace, or any Court of General Seſſions of the Peace, on the preſentment of a Grand Jury, the perſon ſo offending ſhall forfeit and pay a ſum not leſs than *five,* nor more than *ſixty ſhillings,* to the uſe of the poor of the town where the offence ſhall be committed.

Penalty for playing at cards, dice or billiards, at any houſe of entertainment.

[This act paſſed *March* 4, 1786.]

An Act in addition to an Act, entitled, "An act to prevent Incumbrances about the Doors of the Court-Houſe in *Boſton.*"

WHEREAS in and by the ſaid act, to which this is in addition, proviſion is made for preventing incumbrances, *that might hinder or impede the members of the General Court, in their paſſage to, and from the ſaid houſe, but no proviſion is made for preventing the* diſturbances, *to which the ſaid members are expoſed, by means of the noiſes produced by the increaſed number of hackney-coaches, and other carriages, that are now almoſt conſtantly paſſing and repaſſing by the ſaid court-houſe, and by which the members of the ſaid General Court, are often prevented from hearing each other in their publick debates:* Preamble.

For the preventing ſuch diſturbances for the future,

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That no hackney-coach, chaiſe, trucks, or any other carriage, ſhall ſtand, or paſs, during the hours of the ſitting of the General Court, within three hundred feet of the eaſt end of the ſtate-houſe, eaſterly, or make a ſtand within one hundred feet of the weſt end of the ſtate-houſe, nor upon either ſide of the ſaid houſe. And if any perſon ſhall violate this act, he ſhall forfeit and pay for the firſt offence, a fine of *five ſhillings,* and for the ſecond, and every after offence, a fine of *ten ſhillings* ; to be ſued for, and recovered by the meſſenger of the General Court, for the time being, before any Juſtice of the Peace for the county of *Suffolk.* Stand of carriages limited. Penalty.

Provided always, That this act ſhall not be conſtrued, ſo as to hinder any coach, chaiſe or other carriage, from ſtanding or paſſing within the limits aforeſaid, which ſhall be uſed by the Governour, Lieutenant-Governour, the Council, or any Member of the General Court, for the time being, for the purpoſe of riding to and from the Proviſo.

the General Court, or prevent any carriage, paſſing and repaſſing for the neceſſary buſineſs of the inhabitants, living within the limits before mentioned.

[This act paſſed *June* 13, 1786.]

An Act in addition to the ſeveral Acts already made for the prudent Storage of Gun-Powder within the Town of *Boſton*.

Preamble.

WHEREAS the depoſiting of loaded arms in the houſes of the town of Boſton, *is dangerous to the lives of thoſe who are diſpoſed to exert themſelves when a fire happens to break out in the ſaid town:*

Perſons prohibited taking into their dwellings, &c. any piece of ordnance loaded with gun-powder.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That if any perſon ſhall take into any dwelling-houſe, ſtable, barn, out-houſe, ware-houſe, ſtore, ſhop, or other building, within the town of *Boſton*, any cannon, ſwivel, mortar, howitzer, or cohorn, or fire-firm, loaded with, or having gun-powder in the ſame, or ſhall receive into any dwelling-houſe, ſtable, barn, out-houſe, ſtore, ware-houſe, ſhop, or other building, within the ſaid town, any bomb, granade, or other iron ſhell, charged with, or having gun-powder in the ſame, ſuch perſon ſhall forfeit and pay the ſum of *ten pounds*, to be recovered at the ſuit of the firewards of the ſaid town, in an action of debt, before any Court proper to try the ſame; one moiety thereof to the uſe of the ſaid firewards, and the other moiety to the ſupport of the poor of the town of *Boſton*.

Penalty.

Pieces of ordnance charged with gun-powder found in any dwelling-houſe, &c. liable to be ſeized.

II. *And be it further enacted by the authority aforeſaid,* That all cannon, ſwivels, mortars, cohorns, fire-arms, bombs, granades, and iron ſhells of any kind, that ſhall be found in any dwelling-houſe, out-houſe, ſtable, barn, ſtore, ware-houſe, ſhop, or other building, charged with, or having in them any gun-powder, ſhall be liable to be ſeized by either of the firewards of the ſaid town: And upon complaint made by the ſaid firewards to the Court of Common Pleas, of ſuch cannon, ſwivels, mortars, or howitzer, being ſo found, the Court ſhall proceed to try the merits of ſuch complaint by a jury; and if the jury ſhall find ſuch complaint ſupported, ſuch cannon, ſwivel, mortar, or howitzer, ſhall be adjudged forfeit, and be ſold at publick auction; and one half of the proceeds thereof ſhall be diſpoſed of to the firewards, and the other half to the uſe of the poor of the town of *Boſton*. And when any fire-arms, or any bomb, granade, or other ſhell, ſhall be found in any houſe, out-houſe, barn, ſtable, ſtore, ware-houſe, ſhop, or other building ſo charged, or having gun-powder in the ſame, the ſame ſhall be liable to be ſeized in manner aforeſaid; and on complaint thereof, made and ſupported before a Juſtice of the Peace, ſhall be ſold and diſpoſed of as is above provided for cannon.

How diſpoſed of in caſe of forfeiture.

III.

III. *Be it further enacted*, That appeals ſhall be allowed in proſecutions upon this act as is uſual in other caſes. Appeals allowed.

[This act paſſed *March* 1, 1783.]

An Act to prevent Damage from Fire being communicated from Chocolate-Mills and Machines for roaſting Cocoa, in the Town of *Boſton*.

WHEREAS chocolate-mills and machines for roaſting cocoa have been erected in the town of Boſton, *near to other buildings, to the great hazard of the lives and property of the inhabitants of the ſaid town:* Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any perſon, from and after the fifth day of *July* next, ſhall, within the ſaid town, roaſt or cauſe to be roaſted any cocoa, for the purpoſe of manufacturing the ſame into chocolate, in any building whatever, excepting ſuch as may or ſhall be licenced for that purpoſe by the major part of the ſelectmen of the town aforeſaid, and two Juſtices of the Peace for the county of *Suffolk*, *quorum unus*, he ſhall forfeit and pay, for every ſuch offence, a ſum not exceeding *one hundred* nor leſs than *fifty pounds*.

[This act paſſed *June* 30, 1785.]

An Act to prevent the Deſtruction of White Pine Trees in this Commonwealth.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That if any perſon, after the publication of this act, ſhall cut, fell or deſtroy any white pine tree, which is, or ſhall be at the time of felling or deſtroying the ſame, of the diameter of twenty-four inches, or upwards of twelve inches from the ground, growing or ſtanding on any tract of land within any part of this Commonwealth, not the property of any private perſon or perſons, without licenſe firſt had and obtained, for ſo doing, from this Legiſlature, or be aiding and aſſiſting therein, or in drawing away the ſame after ſo cut or felled, he ſhall forfeit the ſum of *thirty pounds*, to be recovered by bill, indictment or information, in any Court of record in this Commonwealth proper to try the ſame, two thirds thereof to the uſe of this Commonwealth, and one third thereof to the informer; and the ſum of *three pounds* for any other white pine tree on the land aforeſaid, to be recovered as aforeſaid, and to the uſes before mentioned; provided ſuch proſecution be commenced within two years from the time when the offence ſhall be committed. Perſons deſtroying white pine trees of certain dimenſions without licence;—penalty. How to be recovered. Proviſo.

[This act paſſed *October* 24, 1783.]

An Act providing for the Payment of Coſts in Criminal Suits.

Preamble.

WHEREAS witneſſes and others neceſſarily concerned in the proſecution of criminal offenders, are equitably entitled to a reaſonable conſideration for their time and expences upon ſuch occaſions, as well when the party or parties charged, ſhall be acquitted, as convicted; and no proviſion being made by law in ſuch caſes:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That

When Parties proſecuted ſhall be ordered to go without Day, or when convict.

in all criminal proſecutions in the Supreme Judicial Court, and in the Courts of General Seſſions of the Peace, when the party or parties proſecuted, ſhall be ordered to go without day, or when being convict ſhall not have ſufficient goods or eſtate to pay coſts of proſecution; in every ſuch caſe, it ſhall be in the power of the Court before whom ſuch acquittal or conviction ſhall be, to tax ſuch coſts for Court charges, as the caſe ſhall appear to require, not exceeding the fees that are, or by law may be ſtated; and ſuch coſts ſo taxed by the Courts of General Seſſions of the Peace, ſhall be paid out of the reſpective county treaſuries. And ſuch coſts, ſo taxed by the Supreme Judicial Court, ſhall be paid by the ſheriffs of the reſpective counties, out of ſuch fines and forfeitures, as may have ariſen, and been incurred by force of any judgment or ſentence of ſuch Court; and allowance ſhall be made by the Treaſurer of the Commonwealth to the ſeveral ſheriffs for any ſums paid as aforeſaid: And when and ſo often as it ſhall happen that any ſheriff ſhall not have in his hands any monies received for fines and forfeitures as aforeſaid, ſuch coſts ſhall be paid out of the publick treaſury, by warrant from the Governour, with advice of Council, to the ſheriff, or ſuch other perſon as the ſame Court ſhall direct.

In ſuch caſes.

II. *And be it further enacted,* That in all criminal proſecutions in the Supreme Judicial Court, and in the Courts of General Seſſions of the Peace, ſince the twenty-ſeventh day of *June* laſt, when the party or parties proſecuted, ſhall have been ordered to go without day, or when having been convicted, ſhall not have had ſufficient goods or eſtate to pay coſt of proſecution, it ſhall be in the power of the Court before whom ſuch acquittal or conviction ſhall have been, to tax ſuch coſts for Court charges, as the caſe ſhall appear to require, not exceeding the fees or coſt by law eſtabliſhed; and the coſts thus taxed, ſhall be paid in manner as before in this act is provided.

Court to tax coſts for Court charges.

[This act paſſed *March* 12, 1783.]

An

An Act in addition to the Act providing for the Payment of Costs in Criminal Suits.

WHEREAS in the said act, no provision is made for the payment of costs, when the party or parties prosecuted, decease before the time of trial, or shall depart in contempt of the Court, before trial or sentence, notwithstanding by such departure the party charged hath incurred or may incur a forfeiture of his recognizance: Preamble.

I. *Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That when any person charged on a criminal prosecution in the Supreme Judicial Court, or in any Court of General Sessions of the Peace in any county within this Commonwealth, hath deceased, or shall decease before the time of trial or sentence; or has departed or shall depart in contempt of the Court, and thereby avoid trial or sentence; or the Attorney-General or other person prosecuting in the name and behalf of the Commonwealth, hath discontinued, or shall with the advice of the Court discontinue the prosecution; in every such case the Court may tax costs for the witnesses and others necessarily concerned in such prosecution, as the case shall appear to require, not exceeding the fees that are or may by law be stated, to be paid in the same manner the costs mentioned in the said act are directed to be paid. When any person under prosecution shall die, depart in contempt of the Court, or the prosecution be discontinued, the Court may tax legal costs for witnesses and others.

[This act passed *March* 16, 1784.]

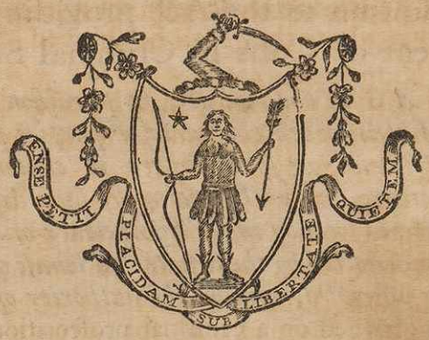
An Act in addition to an Act, entitled "An Act in addition to an Act, providing for the Payment of Costs in Criminal Suits."

WHEREAS in the aforesaid acts, no provision is made for the payment of costs that often necessarily arise in the prosecution of criminal offenders: Preamble.

I. *Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That in cases where costs have already arisen, or may hereafter necessarily arise in the prosecution of criminal offenders, and no provision has already been made by law for the payment thereof; in every such case the Justices of the several Courts of General Sessions of the Peace, in the respective counties in this Commonwealth, may examine and allow accounts of such necessary costs as have arisen or may arise within their respective counties, for witnesses, officers and others concerned in such prosecution, as the case shall appear to require, not exceeding the fees that are or may by law be stated, except in cases otherwise provided for by law. And such accounts when so allowed shall be paid in the manner directed and ordered in the before recited acts. Payment of costs, provided.

[This act passed *March* 18, 1788.]

Perpetual



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART V.

Trade and Commerce.

An Act for the Admeaſurement of Boards, and regulating the Tale of Shingles, Clapboards, Hoops and Staves, and for other Purpoſes therein mentioned.

Surveyors and meaſurers of boards, &c. to be annually elected in towns and diſtricts.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there ſhall be one or more ſuitable perſons elected in every town and diſtrict in this Commonwealth, at their annual meeting in the month of *March*, to be ſurveyors and meaſurers of boards, plank, timber, and ſlit-work, and ſurveyors of ſhingles, clapboards, ſtaves and hoops, who ſhall be ſworn to the faithful performance of the truſt repoſed in them. And all boards, plank, timber, or ſlit-work, offered for ſale, ſhall previous thereto, be ſurveyed, and alſo meaſured, by one of the ſaid ſurveyors, where he ſhall have any doubt of the meaſure, having due conſideration for drying and ſhrinking; who ſhall alſo mark anew all ſuch to the juſt contents thereof, making reaſonable allowance for rots, knots and ſplits; and the buyer ſhall pay to the ſurveyor *ſix pence* per thouſand feet, for viewing only, and *ſix pence* per thouſand feet more for meaſuring and marking, and ſo in proportion for a leſſer quantity.

All boards, &c. to be ſurveyed before ſale.

Fees for viewing and meaſuring.

II. *And be it further enacted by the authority aforeſaid*, That no pine boards ſhall be ſhipped for exportation to foreign markets, but

but ſuch as are ſquare edged, and not leſs than one inch in thickneſs, and not leſs than ten feet in length, on pain of being forfeited to the uſe of the town where they ſhall be ſhipped. No pine boards to be exported, but of ſuch dimenſions.

III. *Be it further enacted by the authority aforeſaid,* That no ſhingles, clapboards, ſtaves or hoops, ſhall be offered for ſale in any town in this Commonwealth, that ſhall be under the following dimenſions, *viz.* All ſhingles ſhall be ſplit croſs ways the grain, and be eighteen inches long, unleſs thoſe made for home uſe; pine ſhingles ſhall be free from ſap, and all ſhingles ſhall be free from ſhakes and worm-holes, and ſhall be half an inch thick at the but-end, when green, and full three-eighths of an inch when thoroughly ſeaſoned, if for exportation to a foreign market; and not leſs than one third of an inch thick at the but, when fully ſeaſoned, if for home uſe, and four inches and an half wide on an average, and none leſs than three inches wide, and ſhall hold their width three-fourths the way to the thin end, and be well ſhaved; and each bundle ſhall contain two hundred and fifty ſhingles, or if bound in ſquare bundles, ſhall contain twenty-five courſes, and meaſure twenty-two inches and an half at the lay: And in caſe there ſhall be more than five ſhingles in any one bundle that are under the above length, breadth or thickneſs, or five ſhort in the tale of any one bundle of two hundred and fifty, the bundle which is ſo deficient, or in which ſuch ſhingles are contained, ſhall be forfeited, and the ſhingles in each bundle which are not merchantable, ſhall be burnt, and the reſidue ſold, and the money ariſing from the ſale ſhall be paid into the hands of the town treaſurer, for the benefit of the poor of ſuch town where the ſhingles are condemned, firſt deducting therefrom the charge of culling and ſurveying. And all white-oak but ſtaves ſhall be at leaſt five feet in length, five inches wide, and one inch and a quarter thick on the heart, or thineſt edge, and every part thereof. And all white-oak pipe ſtaves ſhall be at leaſt four feet and eight inches in length, four inches broad in the narroweſt part, and not leſs than three quarters of an inch thick on the heart, or thineſt edge. And all white-oak hogſhead ſtaves ſhall be at leaſt forty-two inches long, and not leſs than half an inch thick on the heart, or thineſt edge. And all white-oak barrel ſtaves, for a foreign market, ſhall be thirty-two inches long; and for home uſe ſhall be thirty inches long; and all ſhall be half an inch thick on the heart, or thineſt edge. And all white-oak hogſhead and barrel ſtaves ſhall be at leaſt, one with another, four inches in breadth, and none leſs than three inches in breadth, in the narroweſt part; and thoſe of the breadth laſt mentioned, ſhall be clear of ſap. And all red-oak hogſhead and barrel ſtaves ſhall be of the ſame length, width and thickneſs, with the white-oak hogſhead and barrel ſtaves abovementioned: And all ſtaves ſhall be well and proportionably ſplit. And all pine clapboards that ſhall be expoſed to ſale, ſhall be made of good ſound timber, clear of ſap; and all clapboards ſhall be free from ſhakes and worm holes, and of the following dimenſions, *viz.* Full five eighths of an inch on the back, or thickeſt part, five inches wide,

Dimenſions of ſhingles.

In caſe.

To be forfeited.

Dimenſions of white oak ſtaves

Red oak ſtaves to be of the ſame dimenſions.

Dimenſions of clapboards.

wide, and four feet ſix inches long, and they ſhall be ſtrait and well ſhaved. And all hogſhead hoops that ſhall be expoſed to ſale, or exported, ſhall be from ten to thirteen feet in length, and ſhall be made of white oak or walnut, and of good and ſufficient ſubſtance, well ſhaved; thoſe made of oak ſhall be not leſs than one inch broad at the leaſt end, and thoſe made of walnut ſhall be not leſs than three quarters of an inch broad at the leaſt end; each bundle ſhall conſiſt of thirty hoops; and all hoops of ten, twelve and thirteen feet reſpectively, ſhall be made up in diſtinct bundles by themſelves; and if any hoops are packed of leſs dimenſions than thoſe preſcribed by this law, or if any bundle ſhall contain leſs than thirty hoops, ſuch bundle ſhall be forfeited and ſold for the benefit of the poor of the town where it is offered for ſale.

Hogſhead hoops

Hoops not holding out in number to be forfeited.

IV. *And be it further enacted*, That the Surveyor of ſhingles and clapboards ſhall be allowed by the buyer, *ſix pence* per thouſand for ſurveying and telling, and before any ſhingles are ſent from the town where they are made, or at the place of firſt ſale, before their delivery they ſhall be viewed, ſurveyed and meaſured by a ſworn Surveyor, and the town brand ſet upon the hoop of the bundle; and all ſhingles offered for ſale without being ſurveyed and marked as aforeſaid, ſhall be forfeited and diſpoſed of as before provided in this act; and in each maritime town in this Commonwealth, from whence ſtaves or hoops are uſually exported beyond ſea, there ſhall be two or more ſuitable perſons choſen by ſuch towns, ſome time before the twelfth day of *December* next, and forever afterwards at their annual meeting in *March*, to be Viewers and Cullers of ſtaves and hoops, who ſhall be under oath, faithfully to diſcharge their office; and for their encouragement to accept this truſt, they ſhall be allowed for their time and ſervice as follows, *viz. one ſhilling* and *eight pence* per thouſand for barrel ſtaves, *two ſhillings* per thouſand for hogſhead ſtaves, *two ſhillings* and *four pence* per thouſand for pipe ſtaves, and *two ſhillings* and *eight pence* per thouſand for but ſtaves, as well refuſe as merchantable, the merchantable to be paid for by the buyer, the refuſe by the ſeller; and the Culler ſhall be allowed *three ſhillings* per thouſand for hoops.

Fees for ſurveying and telling.

Shingles offered for ſale without being ſurveyed, to be forfeited

Viewers & Cullers of ſtaves & hoops, to be annually elected in maritime towns.

Fees for viewing and culling ſtaves, &c.

V. *And be it further enacted by the authority aforeſaid*, That from and after the twelfth day of *December* next, all ſtaves that ſhall be exported from this Commonwealth beyond ſea, ſhall be firſt culled, and all hoops firſt viewed and ſurveyed by one of the officers aforeſaid, and a certificate given by the Culler or Surveyor, to the maſter or commander of the ſhip or veſſel on board which they are laden, of the quantity by him ſo culled or ſurveyed; and the bands with which the bundles of hoops are bound ſhall be ſealed with the brand of the town from whence they are exported; and that all ſhingles and clapboards that ſhall be exported beyond ſea, ſhall likewiſe be certified by one of the Surveyors already required by law to be choſen in each maritime town within this Commonwealth, to have been by him ſurveyed, viewed and approved, and the number or quantity thereof; and any ſellers of boards, ſtaves, hoops, clapboards or ſhingles that ſhall deliver any of the ſaid articles before they are culled or ſurveyed, ſhall forfeit the ſum of *twelve ſhillings* per thouſand, and

Staves exported to be firſt culled, & all hoops firſt viewed, and a certificate thereof to be given.

Shingles and clapboards for exportation, to be certified.

any

any perſon purchaſing any of the articles before mentioned, and who ſhall receive them before they are culled or ſurveyed, ſhall forfeit and pay the ſum of *twelve ſhillings* per thouſand, one half to the informer, who ſhall ſue for the ſame in any Court of this Commonwealth proper to try the ſame, or before any magiſtrate within this Commonwealth, in caſe the forfeiture does not exceed *forty ſhillings*; the other half to the poor of the town where ſuch offence is committed.

Selling of boards ſtaves, &c. before culling and ſurveying—— penalty.

VI. *And be it further enacted*, That from and after the ſaid twelfth day of *December* next, the maſter or owner of any veſſel having any ſtaves, hoops, boards, clapboards or ſhingles on board, for their cargo, and which ſhall be ſhipped for exportation to a foreign market, after the ſaid twelfth day of *December* next, before ſuch veſſel ſhall be cleared at the Naval-Office, a certificate of ſuch ſtaves, hoops, clapboards, boards and ſhingles, having been culled or ſurveyed, and ſhall likewiſe make oath before the Naval-Officer (who is hereby required and empowered to adminiſter the ſame) or before any Juſtice of the Peace, who ſhall give a certificate of the ſaid oath, which ſhall by the maſter or owner be tranſmitted to the Naval-Officer, that the boards, ſtaves, hoops, clapboards and ſhingles, on board his veſſel, are *bona fide* the ſame boards, ſtaves, hoops, clapboards and ſhingles, certified to have been culled or ſurveyed, and that he has no other on board, and that he will not take any others on board.

Maſter or owner of any veſſel having ſtaves, &c. on board, for exportation, to make oath, &c.

VII. *And be further enacted*, That from and after the twelfth day of *December* next, if any perſon ſhall preſume to ſhip off any boards, ſtaves, hoops, clapboards or ſhingles, unleſs the ſame ſhall firſt have been culled or ſurveyed, and marked by a ſworn Culler or Surveyor as aforeſaid, he ſhall forfeit and pay the ſum of *twelve ſhillings* per thouſand, to be reckoned by feet or tale, according as the articles are uſually ſold, to be diſpoſed of, one half to the poor of the town where the offence is committed, and the other half to the ſurveyer, or any other perſon or perſons who ſhall ſue for the ſame, which he or they are hereby enabled to do, by action, bill, plaint or information, in any Court proper to try the ſame, or before any Juſtice of the Peace, if the forfeiture does not exceed *forty ſhillings*.

Perſons preſuming to ſhip off any boards, &c. unleſs.

Penalty.

VIII. *And be it further enacted*, That in caſe any Culler or Surveyor, ſhall connive at, or allow of the breach of this act, or ſhall be guilty of any fraud or deceit in ſurveying or culling of boards, ſtaves, hoops, clapboards, or ſhingles, he ſhall forfeit and pay the ſum of *ten pounds* for each offence; and in caſe of his refuſal to attend the aforeſaid ſervice, when he ſhall be thereto requeſted, he ſhall forfeit and pay the ſum of *twenty ſhillings*; the forfeitures and penalties in ſuch caſes to be recovered and diſpoſed of as aforeſaid.

Cullers or Surveyors, guilty of fraud or deceit, &c.

IX. *And be it further enacted*, That if any perſon or perſons, who ſhall be duly choſen to ſerve as a Surveyor of boards, clapboards or ſhingles, or as a Culler of ſtaves or hoops, ſhall refuſe or neglect to take the oath for the faithful diſcharge of the office, or to ſerve therein, every ſuch perſon or perſons ſhall pay the ſum of *twenty ſhillings*, to the uſe of the poor of the town chooſing ſuch perſon or perſons,

Perſons choſen ſurveyors or cullers, neglecting to take the oath.

Penalty.

perſons, and every ſuch town ſhall proceed to the choice of other or others, in the room of any perſon ſo refuſing or neglecting, and ſo *toties quoties*.

All former acts repealed.

X. *And be it enacted by the authority aforeſaid*, That all acts heretofore made for the admeaſurement of boards, and for regulating the tale and dimenſions of ſhingles, clapboards, hoops and ſtaves, be, and they are hereby repealed.

[This act paſſed *July* 11, 1783.]

An Act in addition to an Act, entitled, "An Act for the Admeaſurement of Boards, and regulating the Tale of Shingles, Clapboards, Hoops and Staves, and for other Purpoſes therein mentioned."

Preamble.

WHEREAS it is the wiſdom of every commercial country to prevent an abuſe in the manufacture of thoſe articles intended for exportation, in ſuch a manner as that they may preſerve their credit with foreigners, and thereby render their exports as permanent and beneficial as poſſible: And whereas the above-mentioned act does not ſufficiently provide for carrying the good intentions thereof into effect:

Any port or place not within this Commonwealth, to be conſidered as a foreign market, as to the reſtrictions on ſhipping of lumber.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That from and after the firſt day of *January* next, wherever the reſtriction upon the ſhipping of any kind of lumber is mentioned in any of the clauſes of the before recited act, to or for any foreign market, or beyond ſea, the ſame ſhall be conſidered and underſtood to extend to any port or place not within this Commonwealth, and that, previous to any naval-officer's clearing out any veſſel with lumber to any port or place not within this Commonwealth, the like certificate of ſuch ſtaves, hoops, clapboards and ſhingles, having been culled or ſurveyed ſhall be produced, and the ſame oath adminiſtered, as is required to be produced and adminiſtered by the aforeſaid act, for the exportation of lumber to a foreign market.

Additional penalty for exporting lumber not being firſt ſurveyed.

II. *And be it further enacted by the authority aforeſaid*, That from and after the firſt day of *January* next, (in addition to the penalty of *twelve ſhillings* per thouſand, as mentioned in the ſaid act for the ſhipping of lumber, otherwiſe than is therein preſcribed, to be reckoned by feet or tale according as the articles are uſually ſold) whenever it ſhall appear that any of the kinds of lumber mentioned in the ſaid act, have been exported in any veſſel whatever, out of this Commonwealth, to any port or place not within the ſame, unleſs the ſaid lumber has been firſt culled or ſurveyed agreeably to the ſaid act; the maſter or owner of ſuch veſſel ſhall, for the firſt offence, forfeit and pay the ſum of *fifty pounds*, and for the ſecond offence the veſſel ſo carrying the ſaid lumber as aforeſaid, being afterwards found in any part of this Commonwealth, ſhall be forfeited,

ed, to be recovered and applied in like manner as is provided by the ſaid act, for recovering and applying the penalty of *twelve ſhillings* per thouſand as aforeſaid.

And whereas ſome perſons from conſulting their private convenience, in preference to the commercial benefit of the public, may endeavour to evade the good intentions of the before-recited act, by clearing out or exporting the kinds of lumber mentioned therein, without the ſame being culled or ſurveyed agreeable to the ſaid act, by calling it by ſome other name than what it is uſually known by:

III. *Be it therefore enacted by the authority aforeſaid*, That from and after the firſt day of *January* next, no naval-officer, in any caſe whatever, ſhall preſume to clear any veſſel for any port or place not within this Commonwealth, that may have any lumber of the kind on board, mentioned in the before recited act, under the ſpecious pretence of its being chips, wood, or refuge lumber, or by whatever name it may be called, otherwiſe than what it is uſually known by; and if it can be made to appear that any naval-officer ſhall knowingly clear any veſſel with lumber on board, of the kind as mentioned in the aforeſaid act, to or for any port or place not within this Commonwealth, without a certificate being produced previous to his clearing the ſaid veſſel, of the ſaid lumber's being culled or ſurveyed agreeable to the ſaid act, or ſhall clear the ſame under any other name whatever; the ſaid naval-officer for ſuch neglect of duty, ſhall forfeit and pay for every ſuch offence, *one hundred pounds*, to be diſpoſed of, one half to the poor of the town where ſuch offence is committed, and the other half to the ſurveyor, or any other perſon who ſhall ſue for the ſame; which they are hereby enabled to do by action, bill, plaint, or information, in any Court proper to try the ſame. And on information's being given to the ſaid naval-officer, by any two or more credible witneſſes (upon oath if thereto required) of ſuch veſſel's having ſuch lumber on board, previous to his clearing the ſame; ſuch information ſo given to the ſaid naval-officer, ſhall be deemed his having ſufficient knowledge of the ſame.

Naval-officers not to clear veſſels loaded with lumber mentioned in a former act, under pretence of its being chips, &c.

Nor without a certificate of its being ſurveyed.

On penalty.

IV. *And be it further enacted*, That when any naval-officer ſhall connive at any breach of this or the before recited act, or when information is properly given to him, with ſufficient evidence of any violation thereof, and he neglects to enquire into and proſecute the ſame as his duty requires, upon proof being exhibited of ſuch neglect, before the Court of General Seſſions of the Peace, for the county where the ſaid officer may reſide; ſhall, if convicted of the ſaid neglect before the ſaid Court, be adjudged by the ſaid Court as incapacitated from any further exerciſe of his office. And in caſe of the removal of ſuch officer for ſuch neglect, the naval-officer of the port higheſt the place from whence the ſaid officer may be removed, ſhall do and exerciſe all the duties of the ſaid office until another may be appointed in his ſtead.

Penalty for a naval-officer's conniving at any breach of the caſe.

V. *Be it further enacted by the authority aforeſaid*, That a proper allowance ſhall be made for the drying and ſhrinking of pine boards, and that ſuch as ſhall be ſeven-eighths of an inch thick after being fully ſeaſoned, or in the ſame proportion as to thickneſs,

Allowance for drying & ſhrinking of pine boards, &c.

being partly ſeaſoned, and that any ſhingles being four inches in width on an average ſhall be accounted merchantable, and may be ſold here as ſuch, or ſhipped or exported to any market. *Provided*, That ſuch boards and ſhingles ſhall in all other reſpects, be conformable to the ſaid act; and all naval-officers, ſurveyors, and other perſons concerned, are directed and required to govern themſelves accordingly; any thing in this or the act aforeſaid to the contrary notwithſtanding.

Proviſo.

VI. *And be it further enacted*, That the operation of the act aforeſaid, and every article and clauſe thereof, be, and hereby is ſuſpended until the firſt day of *January*, which will be in the year of our Lord, one thouſand ſeven hundred and eighty-five.

Operation of an act ſuſpended.

[This act paſſed *March* 16, 1784.]

An Act regulating the Exportation of Flax-Seed, Pot-Aſh, Pearl-Aſh, Beef, Pork, barreled Fiſh, and dried Fiſh.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That from and after the twentieth day of *December* next, no flax-ſeed ſhall be ſhipped or exported out of this Commonwealth, but ſuch as ſhall have been ſurveyed and found to be well cleanſed and in good order, and in caſks, each caſk containing ſeven buſhels and one peck, or in caſks containing one half the ſaid quantity each.

No flax-ſeed to be exported, unleſs ſurveyed & found to be well cleanſed, &c.

II. *And be it further enacted*, That the Governour, by and with the advice and conſent of the Council, be, and is hereby empowered, to appoint, in ſuch ſea-port towns within this Commonwealth as there ſhall be occaſion, one or more ſkilful and diſintereſted perſon or perſons, to be ſurveyors, for the ſurveying and proving flax-ſeed, who ſhall be ſworn to the due and impartial execution of their truſt: And their duty ſhall be to inſpect and ſurvey all flax-ſeed that ſhall be intended to be laden on board of any veſſel for foreign exportation; and every ſuch ſurveyor is hereby authorized to open the caſks containing the ſaid commodity, intended to be exported as aforeſaid, and if need be, meaſure and ſhift the ſame into other caſks, ſo as thoroughly to examine the whole, and ſee that it be clear from mixture of wild or other ſeed, or dirt, and of the meaſure aforeſaid. And every caſk containing the ſaid quantity, which by ſuch ſurvey and examination ſhall, according to the ſurveyor's beſt judgment, appear to be cleanſed as aforeſaid, he ſhall mark or imprint with a burning iron, the following mark or letters, A. P. with the name of the town where it ſhall be thus approved, the name of the ſaid ſurveyor at large, and the letter S. at the end thereof, denoting that the ſame has been ſurveyed and approved.

Governour empowered to appoint ſurveyors of flax-ſeed.

Their duty.

III. *And be it further enacted by the authority aforeſaid*, That from and after the twentieth day of *December* next, no pot-aſh, or pearl-aſh, ſhall be ſhipped or exported out of this Commonwealth,

but

but ſuch as ſhall have been aſſayed and found to be of ſufficient ſtrength and purity, and to have thoſe qualities in ſuch degree of perfection as ſhall be aſcertained and fixed by the Governour, with the advice and conſent of the Council, as the ſtandard of ſuch pot-aſh and pearl-aſh as ſhall be deemed merchantable, and fit for exportation.

No pot or pearl-aſh ſhall be exported, unleſs aſſayed & found merchantable.

IV. *And be it further enacted*, That the Governour and Council, be, and they are hereby empowered, to appoint, in ſuch ſea-port towns within this Commonwealth as there ſhall be occaſion, one or more ſkilful and diſintereſted perſon or perſons, to be aſſay-maſters, for the proving and aſſaying pot-aſh and pearl-aſh, who ſhall be ſworn to the due and impartial execution of their truſt; and their duty ſhall be to inſpect and aſſay all pot-aſh and pearl-aſh, that ſhall be brought to any ſuch ſea-port town to be ſhipped; and every ſuch aſſay-maſter is hereby authorized to open the caſks or veſſels containing thoſe commodities, and to take out ſo much thereof, as may diſcover the quality of the whole; and every caſk or other veſſel of pot-aſh or pearl-aſh, which by ſuch aſſay ſhall be found to be good and merchantable, according to the rule or ſtandard that ſhall be eſtabliſhed as aforeſaid, he ſhall mark or imprint with a burning iron, the following mark or letters, AS. D. with the name of the town where the ſame ſhall have been thus aſſayed, and the aſſayer's name at large, and the letter A. at the end thereof, denoting that the ſame has been aſſayed and approved.

Governour and Council empowered to appoint aſſay-maſters, for proving and aſſaying pot-aſh, &c.

Their duty.

V. *And be it further enacted*, That if the owner of any flax-ſeed, pot-aſh or pearl-aſh, or other perſon employed by him, ſhall preſume to lade, or put on board any veſſel, bound out of the Commonwealth, any flax-ſeed, pot-aſh and pearl-aſh, other than ſuch as ſhall have been approved, by a ſurveyor or aſſay-maſter, reſpectively, or ſhall be contained in any caſk, or other veſſel, that ſhall not have their marks, ſtamps or brands upon it; or if any maſter of a ſhip or other veſſel, or other officer or mariner, ſhall receive on board any ſuch, the offender or offenders ſhall incur the penalty of *five pounds* for each caſk or other veſſel ſo ſhipped, to be ſued for and recovered in any Court of record within this Commonwealth, proper to try the ſame; and all ſuch flax-ſeed, pot-aſh and pearl-aſh (laded or received on board as aforeſaid) ſhall be forfeited. And it ſhall be lawful for any Juſtice of the Peace, upon information given of any flax-ſeed, pot-aſh or pearl-aſh, put on board any ſuch ſhip or other veſſel, as aforeſaid, not marked as aforeſaid, to iſſue his warrant, directed to the ſheriff or his deputy, or conſtable, requiring them reſpectively to make ſeizure of any ſuch flax-ſeed, pot-aſh, or pearl-aſh, ſhipped and not marked as aforeſaid, and to ſecure the ſame in order for trial, and ſuch officers are hereby reſpectively empowered and required to execute the ſame.

Perſons preſuming to ſhip any flax-ſeed, pot-aſh, &c. not approved;

Penalty.

VI. *And be it further enacted*, That if after any caſk or other veſſel, containing flax-ſeed, or pot-aſh, or pearl-aſh, ſhall have been approved and ſtamped with the ſurveyor's or aſſay-maſter's marks, ſtamps or brands, any cooper or other perſon ſhall preſume to ſhift the contents of ſuch caſk or other veſſel, and to put therein any flax-ſeed, pot-aſh or pearl-aſh, that has not been duly ſurveyed or aſſayed,

Perſons ſhifting the contents of caſks after being approved.

assayed, and approved as aforesaid, such cooper or other person of-
Penalty. fending therein, shall forfeit and pay the sum of *ten pounds* for every cask so shifted, to be recovered in manner as aforesaid.

VII. *And be it further enacted*, That in case any surveyor
Surveyors or assay-masters guilty of neglect or fraud; or assay-master, appointed and sworn as aforesaid, shall be guilty of any neglect or fraud in assaying or surveying any flax-seed, pot-ash or pearl-ash, contrary to the true intent and meaning of this act, or shall mark with their respective brands, stamps or marks, any casks containing flax-seed, or pot-ash, or pearl-ash, which they had not actually and thoroughly surveyed or assayed, and which may be intended for exportation out of this State, he or they shall forfeit
Penalty. and pay the sum of *ten pounds* for every such neglect, or for every cask falsely marked, to be recovered as aforesaid.

VIII. *Be it further enacted by the authority aforesaid*, That each
Each cask, before any pot or pearl-ash are put therein, to be weighed, &c. cask, before any pot-ash or pearl-ash are put therein, shall be weighed by the manufacturer of such pot-ash or pearl-ash, who shall, with a marking-iron, mark on one of the heads thereof, the full weight of the cask, and the initial letters of his name; and in case he shall falsely mark the same, such manufacturer, upon conviction thereof, shall forfeit and pay the sum of *forty shillings*, for each cask so falsely marked.

IX. *And be it further enacted*, That the respective surveyors and
Surveyors and assay-masters fees. assay-masters shall be paid for every cask of flax-seed, pot-ash or pearl-ash, that they shall survey or assay, the sum of *six pence*, provided the number does not exceed ten, and *four pence* for each cask exceeding that number, exclusive of cooperage, to be paid by the shipper.

X. *Be it further enacted by the authority aforesaid*, That the
Selectmen to choose annually, fit persons to be searchers and packers of barreled beef, &c. selectmen, or the major part of them, in every town in the Commonwealth, where there may be occasion, be, and they are hereby empowered and directed, to choose and appoint annually a fit person or persons to be searchers and packers of barreled beef, pork and fish, who shall be sworn to the faithful execution of their trust, by the town-clerk of the said town, and the said town-clerk shall record the same in the town books; whose duty shall be to pack and search all the fish, beef and pork which shall be packed in the same, designed for exportation out of this State, and they shall not pack any fish, beef or pork, in any cask which shall be of unseasoned stuff, or which shall be under the assize established by law, under the penalty of *ten shillings* for every cask so packed.

XI. *And be it further enacted*, That in every town where such
Duty of such searchers and packers. commodities are packed up for sale, the searcher and packer of such town, or of the town where they are put to sale or shipped, shall previously thereto, see that they be properly repacked, and that there be good salt in each cask, sufficient to preserve the fish, beef or pork, from damage to any port or place to which they are designed to be shipped; and it shall be his business to see that the beef and pork in cask is of the whole, half and quarter, and so proportionably, that the best be not left out; and that each barrel of pork shall weigh two hundred pounds weight, and each barrel of beef two hun-

dred

dred and twenty pounds weight, each caſk to be well ſeaſoned, and bound with not leſs than twelve ſufficient hoops; and that mackarel and other barreled fiſh be packed all of one kind, and in caſks well ſeaſoned, containing not leſs than thirty gallons, and that all caſks ſo packed be full, and the fiſh ſound and well ſeaſoned; on all which caſks of beef, pork and fiſh, ſo ſearched, examined and approved, the ſaid packer ſhall brand or imprint, with a burning iron, the following brand or mark, MASS. RPD. with the initial letters of his chriſtian name and his ſirname at large, and the letter P. at the end thereof, denoting that the ſame is merchantable, and in good order for exportation; and all ſuch other proviſion as the packer ſhall find wholeſome and uſeful, though for its quality it be not merchantable, he ſhall cauſe to be well packed, ſalted and filled, and the ſame mark with the word REFUSE; for which he ſhall receive from the owner *ſix pence* for each barrel, and ſo in proportion for a larger or ſmaller caſk. And if any ſuch proviſions be put to ſale, or ſhipped off without having been approved by a packer, and the caſks in which they are contained have not the ſaid packer's ſtamp, mark or brand upon them, or if any maſter of any ſhip or other veſſel, officer or mariner, ſhall receive on board any ſuch, the offender or offenders ſhall incur the penalty of *ten pounds* for each caſk ſo ſhipped, to be ſued for and recovered in any Court of record within this Commonwealth, proper to try the ſame; and all ſuch fiſh, beef or pork (laded or received on board as aforeſaid) ſhall be forfeited.

Penalty for ſhipping ſuch proviſions not approved.

XII. *And be it further enacted*, That if any cooper, packer or other perſon, ſhall ſhift any fiſh or fleſh, either on board any ſhip or other veſſel, or on ſhore, after the ſame hath been ſo branded, ſtamped or marked by the packer, and ſhip and export the ſame, and anew brand, ſtamp or mark the caſk whereinto ſuch proviſions are ſhifted, all perſons acting, ordering or aſſiſting therein, and being thereof convicted, ſhall forfeit and pay a ſum not exceeding *fifty pounds*, nor leſs than *ten pounds*, and pay a fine for each caſk ſo ſhifted, *ten pounds*. And if any perſon or perſons other than the proper officer, ſhall preſume to mark, ſtamp, or brand any caſk of flax-ſeed, pot-aſh, pearl-aſh, beef, pork or barreled fiſh, with the ſtamping or branding inſtrument belonging to ſuch officer, or other inſtrument made in imitation thereof, ſuch perſon or perſons on conviction thereof, ſhall forfeit and pay a ſum not leſs than *ten pounds*, nor more than *fifty pounds*, for each caſk ſo marked, ſtamped or branded, to be recovered in manner aforementioned.

Penalty for ſhifting fiſh or fleſh, after being ſtamped, &c. by the packer.

XIII. *And be it further enacted by the authority aforeſaid*, That no veſſel on board of which any caſk of flax-ſeed, pot-aſh, pearl-aſh, barreled pork, beef or fiſh, is ſhipped for exportation, ſhall be cleared out by the naval-officer until the maſter or owner thereof ſhall have produced a certificate or certificates from ſome perſon or perſons duly appointed for the purpoſe of ſurveying, aſſaying, proving or packing the ſaid articles, that the ſame have been ſurveyed, aſſayed, proved, packed or repacked, as by this act is required, which certificate or certificates ſhall be granted free from any expence.

No veſſel having on board flax-ſeed, &c. to be cleared out by the naval-officer until.

And whereas great inconvenience and damage to merchants, and much loſs to the intereſts of the Commonwealth, ariſe for want of proper perſons being appointed in the ſea-port towns to cull dry fiſh:

Cullers of dry fiſh to be annually choſen.

XIV. *Be it therefore enacted by the authority aforeſaid*, That there ſhall be annually choſen in every ſea-port town within this Commonwealth, where fiſh is made and cured, or ſold, at the annual *March* meeting, a ſuitable number of ſkilful and diſintereſted perſons, inhabitants of ſuch town, to be cullers of fiſh; and any perſon who ſhall cull fiſh without being choſen and ſworn, ſhall forfeit the ſum of *five pounds* for every quintal of fiſh by him culled, and ſuch cullers in culling fiſh ſhall have regard to the contract between the buyer and ſeller, with reſpect to the ſeaſon of the year wherein ſuch fiſh is cured.

Culler to be ſworn.

XV. *And be it further enacted*, That every maſter or commanding officer of any ſhip or other veſſel, who ſhall take on board any fiſh in order to tranſport the ſame beyond ſea, without having the ſame firſt ſurveyed or culled by a perſon duly appointed and under oath, ſhall forfeit and pay a fine of *ſix ſhillings* for each and every quintal ſo received or taken on board; and every perſon choſen into the office of a culler of fiſh, ſhall before he enter on the duties of his office, be ſworn as other town officers are, to the faithful diſcharge of his truſt, and ſhall be allowed and paid *one penny half penny* for every quintal of fiſh which he ſhall ſurvey or cull, by the purchaſer thereof.

Proviſo.

Provided nevertheleſs, When it ſhall ſo happen that the ſworn cullers cannot be obtained, that then it ſhall and may be lawful for the buyer and ſeller to agree upon ſome meet perſon to be a culler in ſuch caſe,—*Provided*, he be firſt ſworn faithfully to diſcharge the truſt.

Cullers already choſen, to be continued, until.

XVI. *And be it enacted by the authority aforeſaid*, That the cullers of fiſh already choſen in the ſeveral towns in this Commonwealth, be continued in office until their next *March* meetings reſpectively.

Time this act takes place.

XVII. *And be it further enacted*, That this act ſo far as it regulates and reſpects the exportation of barrel pork and beef, ſhall not be in force until the twentieth day of *December* next; and ſo far as this act regulates and reſpects the exportation of barreled fiſh, it ſhall not be in force until the firſt day of *April* next.

Penalties, how appropriated.

XVIII. *And be it further enacted*, That penalties and forfeitures ariſing by force and virtue of this act, ſhall be one half to the uſe of the Commonwealth, and the other half to him or them who ſhall inform and ſue for the ſame.

Former laws repealed.

XIX. *And it is enacted*, That all laws heretofore made, ſo far as they reſpect the commodities by this act regulated, be, and they are hereby repealed.

[This act paſſed *November* 9, 1784.]

An

An Act, for the altering of a certain Clauſe in an Act entitled, "An Act, regulating the Exportation of Flax-Seed, Pot-Aſh, Pearl-Aſh, Beef, Pork, barreled Fiſh, and dried Fiſh."

Preamble.

WHEREAS by ſaid act, no Flax-Seed can be ſhipped or exported out of this Commonwealth, but in caſks containing ſeven buſhels and one peck each, or half that quantity, which is found injurious to this Commonwealth : Therefore,

Clauſe repealed.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the clauſe in ſaid clauſe, reſpecting Flax-Seed, be ſo far altered, as that the caſks in which Flax-Seed may be ſhipped or exported, ſhall contain ſeven buſhels, or half that quantity ; any thing in ſaid act to the contrary notwithſtanding.

[This act paſſed *October* 20, 1786.]

An Act for the further Regulating the Aſſize of barrel Beef and Pork.

Quantity each barrel, &c. ſhall contain, & how packed.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That from and after the paſſing this act, every barrel of beef ſalted for ſale or exportation, ſhall contain at the leaſt, two hundred pounds weight of beef ; and every half barrel, one hundred pounds weight of beef, conſiſting of a due proportion of the beſt as well as the pooreſt part of each quarter reſpectively, without having any part culled out ; to be packed in good ſound full bound caſks : And from and after the firſt day of *Auguſt* next, every barrel and half barrel of beef, ſo packed, ſhall be in white oak caſks, clear of ſap, and full bound. And from and after the paſſing this act, every barrel of pork ſalted for ſale or exportation, ſhall contain at leaſt two hundred pounds weight of pork, and every half barrel one hundred pounds weight of pork ; conſiſting of a due proportion of the beſt as well as the pooreſt part of each hog, without having any part culled out ; and each barrel containing not more than three half heads, and ſix legs, to be packed in good ſound white oak full bound caſks : And from and after the firſt day of *Auguſt* next, every barrel of pork ſo packed, ſhall be in white oak caſks, clear of ſap and full bound. And the ſeveral packers of ſalted beef and pork within this Commonwealth, are hereby directed to govern themſelves accordingly, under the ſame penalties as are already in ſuch caſes by law provided. And for the more effectually carrying into execution the proviſions of this act :

II.

Forfeiture, if not packed, &c. as provided by this act.

II. *It is further enacted by the authority aforesaid*, That if any person shall, from and after the passing this act, offer for sale, or sell any cask of salted beef or pork, not containing the quantity, and packed in the manner provided in this act, he shall forfeit for every cask of salted beef and pork he shall so offer for sale, the sum of *three pounds*, lawful money, to be recovered by action, information or indictment, in any Court proper to try the same, one moiety thereof to the use of the person prosecuting for the same, and the other moiety to the use of the poor of the town, wherein the offence shall have been committed.

Former act repealed.

III. *And be it further enacted by the authority aforesaid*, That an act, entitled, "An act for altering a certain clause in an act entitled, An act regulating the exportation of flax-seed, pot ash, pearl ash, beef, pork, barreled fish and dried fish," made and passed in the year of our Lord, one thousand seven hundred and eighty six, from and after the passing this act, be, and hereby is repealed.

[This act passed *November* 14, 1787.]

[*The act repealed by the foregoing clause, passed* November 16, 1786, *and bears the same title as the act which immediately precedes this.*]

An Act for regulating the Exportation of Tobacco and Butter, and the Weight of Onions in Bunches, and the Size of Lime-Casks.

Preamble.

WHEREAS considerable quantities of Tobacco are or may be raised in this Commonwealth, which if examined and subjected to proper regulations, might be made an article of export:

No Tobacco to be exported, but such as shall be inspected.

I. *Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That from and after the first day of *January* next, no Tobacco shall be shipped or exported from this Commonwealth, but such only as shall have been inspected, and found to be well cured, and fit for foreign markets, and packed in straight casks:—said casks shall be four feet, four inches in length, and two feet seven inches diameter at the head, containing not less than nine hundred, and not more than fourteen hundred pounds weight each; or if packed in half casks, to contain not less than four hundred, nor more than six hundred pounds weight in each, unless such casks of Tobacco shall appear to have been inspected and marked agreeably to the laws of some other State.

Governour and Council to appoint inspectors.

II. *And be it further enacted*, That the Governour, by and with the advice of Council, be, and is hereby empowered to appoint in such seaport, and other exporting towns within this Commonwealth, as there shall be occasion, one or more skilful and disinterested person or persons, to be Inspectors of Tobacco that shall be exported from this Commonwealth, who shall be sworn to the due and impartial execution of their trust; and their duty shall be to inspect all Tobacco that shall be intended to be laden on board of any vessel

Inspectors duty.

for

for foreign exportation, or that ſhall be intended to be tranſported by land or water, to either of the United States; and every ſuch inſpector is hereby required and authorized, to open the caſks containing the ſaid commodity, intended to be exported as aforeſaid, and inſpect it, in four equal diviſions; *that is to ſay*, they ſhall take the caſk from the tobacco, and with an iron bar, or other inſtrument, lift one quarter, and then go through the whole, until it ſhall be examined in four different parts, and ſee that it be properly dry, well cured, not rotten, or damaged, and of the weight, and packed in ſuch caſks, as are before-mentioned; and ſuch part as appears to be damaged or rotten, or unfit for exportation, ſhall be burned; and on every caſk containing the ſaid quantity which by ſuch inſpection ſhall, according to the inſpector's beſt judgment, appear to be well cured and not rotten or damaged as aforeſaid,—he ſhall mark or impreſs with a burning iron the letters A. P. with the name of the town where it ſhall be thus approved, the name of ſaid inſpector at large, and the letter I. at the end thereof, denoting that the ſame has been inſpected and approved.

And whereas large quantities of butter are made in, and exported from this Commonwealth, which for want of due examination, and proof of its fitneſs, is diminiſhed in its value at foreign markets:

III. *Be it therefore enacted by the authority aforeſaid*, That from and after the firſt day of *January* next, no butter ſhall be ſhipped or exported out of this Commonwealth, but ſuch as ſhall have been proved, and found to be well wrought, of a good quality and fit for foreign exportation, and packed in well ſeaſoned caſks or firkins, containing fifty pounds each, or in half firkins, containing twenty-five pounds each.

No Butter to be exported unleſs proved & found to be of a good quality.

IV. *And be it further enacted*, That the Governour, by and with the advice and conſent of Council, be, and he is hereby empowered, to appoint in ſuch ſeaport towns, within this Commonwealth, as there ſhall be occaſion, one or more ſkilful and diſintereſted perſon or perſons, to be provers of butter in firkins, who ſhall be ſworn to the due and impartial execution of their truſt: and their duty ſhall be to inſpect, and prove all butter in firkins, that ſhall be intended to be laden on board any veſſel for foreign exportation; and every ſuch prover is hereby authorized to open the caſks or firkins, containing the ſaid commodity, intended to be exported as aforeſaid, and with an hollow iron-ſearcher, ſhall from one ſide of the head of ſaid caſks or firkins, perforate diagonally to the other head, and thereby draw out ſo much butter as ſhall determine the quality of the whole; and ſee that it be preſerved with a due proportion of good fine ſalt, ſweet and in all reſpects fit to be exported, without danger of ſpoiling, to any foreign market. And every firkin containing the ſaid quantity, which by ſuch proof and inſpection ſhall, according to the prover's beſt judgment, appear to be good and merchantable as aforeſaid, ſhall by him be marked or impreſſed with a burning-iron, with the letters A. P. and with the name of the town where it ſhall be thus approved, and the name of the prover at large.

Governour and Council to appoint povers of Butter.

Their duty.

Penalty for presuming to lade or put on board any veſſel, Tobacco or Butter not approved.

V. *And be it further enacted,* That if the owner of any tobacco or butter, or any other perſon employed by him, ſhall preſume to lade or put on board any veſſel bound to any port without the Commonwealth, any tobacco or firkin butter, other than ſuch as ſhall have been approved by an inſpector or prover, and contained in caſks or firkins not having the aforeſaid marks, ſtamps or brands; or if any maſter of a ſhip or other veſſel, or other officer or mariner, ſhall receive on board any ſuch, the offender or offenders ſhall incur the penalty of *ten pounds* for each caſk of tobacco, and *two pounds* for each firkin of butter ſo ſhipped, to be ſued for, and recovered in any Court of Record within this Commonwealth, proper to try the ſame; and all ſuch tobacco and butter, laden or received on board as aforeſaid, ſhall be forfeited.

Juſtices of the Peace may iſſue warrants for the ſeizure of ſuch Tobacco or Butter, ſo ſhipped.

And it ſhall be lawful for any Juſtice of the Peace, upon information given of any tobacco or butter, put on board any ſuch ſhip or other veſſel as aforeſaid, not duly marked or branded, to iſſue his warrant directed to the ſheriff, his deputy, or a conſtable, requiring them reſpectively to make ſeizure of any ſuch tobacco or butter, ſhipped and not marked as aforeſaid, and to ſecure the ſame, in order for trial; and ſuch officers are hereby reſpectively directed and empowered to execute the ſame.

Penalty for ſhifting the contents of any caſks, after being inſpected.

VI. *And be it further enacted,* That if after any caſk or firkin containing tobacco or butter, ſhall have been approved and ſtamped with the inſpector's or prover's marks, ſtamps or brands as aforeſaid, any cooper or other perſon ſhall preſume to ſhift the contents of ſuch caſks or firkins, and put therein any tobacco or butter, that hath not been duly inſpected, proved and approved as aforeſaid, ſuch cooper, or other perſon ſo offending, ſhall forfeit and pay the ſum of *five pounds*, for every caſk of tobacco, and *twenty ſhillings*, for every firkin of butter, ſo ſhifted, to be recovered in manner as aforeſaid.

Inſpectors or Provers, guilty of neglect of duty;

VII. *And be it further enacted,* That in caſe any inſpector or prover, appointed and ſworn as aforeſaid, ſhall be guilty of any neglect or fraud, in inſpecting or proving any tobacco or butter, contrary to the true intent and meaning of this act, or ſhall mark with their reſpective brands or ſtamps, any caſk containing tobacco or butter, which they have not actually and thoroughly inſpected or proved, and which may be intended for exportation out of this State, he or they ſhall forfeit and pay the ſum of *five pounds*, for every ſuch neglect, or for every caſk ſo falſely marked, to be recovered as aforeſaid.

Penalty.

Perſons not appointed, preſuming to mark caſks

Penalty.

VIII. *And be it further enacted,* That if any perſon or perſons, not appointed and ſworn as aforeſaid, ſhall preſume to mark or brand any caſks of tobacco or butter, as above deſcribed, he ſhall incur the aboveſaid penalty of *five pounds*, for every caſk ſo marked or branded, to be recovered as aforeſaid.

Caſks or firkins before any Tobacco or Butter be put therein to be weighed.

IX. *Be it further enacted,* That each caſk or firkin, before any tobacco or butter be packed therein, ſhall be weighed by the owner of ſuch tobacco or butter, who ſhall with a marking iron, mark on one of the heads thereof, the full weight of the caſk and the initial

initial letters of his name: and in caſe he ſhall falſely mark the ſame, ſuch owner, upon conviction thereof, ſhall forfeit and pay the ſum *three pounds*, for each caſk ſo falſely marked.

X. *And be it further enacted*, That the reſpective inſpectors ſhall be paid for every caſk of tobacco, they ſhall inſpect and prove as before directed, *one ſhilling* and *ſix pence*, provided the number doth not exceed four, and *one ſhilling* for each caſk exceeding that number. And the reſpective provers ſhall for every firkin by them examined and proved, as before directed, be paid *four pence*, provided the number doth not exceed ſix; and *two pence* for each, exceeding that number; both inſpectors and provers fees, to be excluſive of cooperage, and to be paid by the ſhippers.

Inſpectors and Provers fees.

XI. *And be further enacted*, That no veſſel on board which any tobacco in caſks, or butter in firkins, ſhall be ſhipped for exportation, ſhall be cleared out by the naval-officer, until the maſter or owner ſhall have produced a certificate or certificates, from an inſpector or prover appointed and ſworn as aforeſaid, that ſaid articles have been by him inſpected and proved as this act directs; which certificates ſhall be granted free from any expence; and the ſaid maſter ſhall ſwear that the manifeſt by him preſented, to the beſt of his knowledge, contains the whole of the cargo on board of his veſſel, and that he will not take any more on board without clearing the ſame.

No veſſel with Tobacco or Butter on board, ſhall be cleared out, until a certificate is produced from an Inſpector or Prover.

XII. *And be it further enacted*, That all penalties and forfeitures, ariſing by force and virtue of this act, ſhall be one moiety thereof to the uſe of this Commonwealth, and the other moiety to him or them who ſhall inform and ſue for the ſame.

Forfeitures, how applied.

And whereas great quantities of onions are raiſed in and exported from this Commonwealth, in bunches: to prevent frauds by diminiſhing the uſual weight of ſaid bunches of onions,

XIII. *Be it therefore enacted by the authority aforeſaid*, That from and after the firſt day *Auguſt* next, no onions, in bunches, ſhall be ſhipped or exported out of this Commonwealth, unleſs they weigh as follows, *viz.* Rare-ripes (ſo called) two and half pounds, and onions from the ſeed, three and half pounds per bunch.

No Onions in bunches to be exported, unleſs they weigh as this act ſpecifies.

XIV. *And be it further enacted*, That the ſelectmen of each town where ſuch onions ſhall be ſhipped, are hereby authorized and directed to appoint ſome ſuitable perſon or perſons to weigh the ſame, and give certificates of the weight; which perſon or perſons ſo appointed, ſhall be ſworn to the faithful performance of his or their duty, and ſhall receive, as fees, *eight pence* for every hundred bunches ſo weighed and certified, for any quantity not exceeding five hundred bunches, and *four pence* for a greater quantity; ſaid fees to be paid by the purchaſer.

Selectmen directed to appoint perſons to weigh Onions.

Such perſons to be ſworn.

Their fees.

XV. *And be it further enacted*, That if any perſon or perſons ſhall, after the paſſing of this act, preſume to expoſe for ſale within this Commonwealth, any onions in bunches, without firſt having them weighed as aforeſaid, and having obtained a certificate of the ſame, according to the true intent and meaning of this act, he ſhall forfeit

Perſons preſuming to expoſe for ſale, Onions not weighed;

Forfeiture.

forfeit the ſame, one moiety thereof to and for the uſe of the poor of the town where they may be expoſed to ſale, the other moiety to him or them who ſhall inform of the ſame; and the ſelectmen of ſuch town, or the major part of them, are hereby authorized and empowered to ſeize the ſame, and ſell them at public auction, and to account with the overſeers of the poor of ſuch towns for the net proceeds of one moiety thereof, and the other to ſaid informant.

And to prevent frauds by reducing the ſize of lime-caſks,

Size of lime-caſks regulated.

XVI. *Be it therefore enacted by the authority aforeſaid,* That from and after the firſt day of *March* next, no caſks of lime offered for ſale within this Commonwealth, ſhall contain leſs than one hundred gallons of merchantable lime; and whoſoever ſhall ſell, or offer for ſale, any caſks of lime, containing leſs than one hundred gallons of merchantable lime as aforeſaid, ſhall, upon information, be convicted before any Court of Record proper to try the ſame, and thereupon forfeit the whole of ſaid property, one moiety thereof to and for the uſe of the poor of the town where ſuch property was expoſed for ſale, the other moiety to and for the uſe of him or them who ſhall inform of the ſame.

[This act paſſed *November* 8, 1785.]

An Act to prevent the Exportation of Green or Unmanufactured Calf Skins out of this Commonwealth, by Land or Water.

Preamble.

WHEREAS the exporting of green or unmanufactured calf ſkins, will occaſion a ſcarcity thereof, and be attended with diſagreeable conſequences to the Commonwealth: For preventing thereof,

No unmanufactured calf ſkins ſhall be exported.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That from and after the paſſing this act, no green or unmanufactured calf ſkins, ſhall be exported out of the limits of this Commonwealth, by land or water; and if the owner or owners of any green or unmanufactured calf ſkins, or other perſon or perſons, employed by him or them, ſhall lade or put on board of any veſſel or float, bound out of this Commonwealth, any green or unmanufactured calf ſkins; or if any maſter of any ſhip or veſſel, or other officer or mariner, ſhall receive on board, any green or unmanufactured calf ſkins, as aforeſaid, the perſon or perſons ſo offending, ſhall incur the penalty of *ſix ſhillings* for each and every green or unmanufactured calf ſkin, ſo

Penalty.

ſhipped or attempted to be ſhipped; to be ſued for and recovered in any Court within this Commonwealth, proper to try the ſame; and every ſuch green or unmanufactured calf ſkin, laded on board of any veſſel as aforeſaid, ſhall be forfeited. And it ſhall and may be lawful for any Juſtice of the Peace, upon information given of any green or unmanufactured calf ſkins, being put on board any ſhip or other veſſel, with intent to export the ſame as aforeſaid, to

iſſue

iſſue his warrant directed to the ſheriff or his deputy, or any conſtable, requiring them reſpectively, to make ſeizure of any ſuch green or unmanufactured calf ſkins, laded for exportation as aforeſaid, to ſecure the ſame, in order for trial, and ſuch officers are hereby reſpectively empowered and required, to execute the ſame; and every officer of impoſt and exciſe, and every naval officer, and their reſpective deputies, are hereby ſeverally empowered, on information given by any perſon or perſons, to ſeize and ſecure any green or unmanufactured calf ſkins laded as aforeſaid, for trial; and the fines or forfeitures incurred by a breach of this act, ſhall be one moiety thereof to the perſon or perſons who may give information, ſue for and recover the ſame, and the other moiety to and for the uſe of this Commonwealth.

Impoſt, exciſe and Naval Officers empowered to make ſeizure, &c.

[This act paſſed *March* 31, 1788.]

An Act for encouraging the Manufacture of Loaf Sugar within this Commonwealth.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That from and after the firſt day of *March* next, all loaf ſugar (if of foreign manufacture) that ſhall be imported into this Commonwealth, by water, and unloaded, ſhall be forfeited; and all ſuch loaf ſugar brought into this Commonwealth by land, ſhall alſo be forfeited; and any citizen of this Commonwealth may ſeize and ſecure the ſame for trial; and if the claimers do not make it appear on trial that the loaf ſugar ſo ſeized is the manufacture of this, or ſome other of the United States, it ſhall be adjudged forfeited; one moiety thereof to his or their uſe who ſhall ſeize the ſame, and the other moiety to the uſe of the Commonwealth.

Importation of loaf ſugar prohibited, on penalty of forfeiture.

Provided nevertheleſs, If any veſſel, having loaf ſugar on board, ſhall arrive in this Commonwealth in diſtreſs, and be obliged to unlade it, in order to repair the ſaid veſſel, the ſame ſhall not be forfeited, if the captain or owner ſhall land it under the care of the naval-officer, and give bonds as the law now directs in caſes of veſſels being in diſtreſs.

Proviſo.

II. *And be it further enacted by the authority aforeſaid,* That all ſeizures of loaf ſugar under this act ſhall be void, unleſs the party ſeizing (not being an officer duly authorized to make ſuch ſeizure) ſhall, within twenty-four hours after ſuch ſeizure, give bond, with ſufficient ſurety, in the judgment of ſome Juſtice of the Peace within the county, to the perſon from whom ſuch ſugar ſhall be taken, conditioned, to pay all ſuch damages and coſts as the party may be entitled to, from whom ſuch ſugar may be taken, provided the ſame ſhall not, upon due proceſs had thereon, be adjudged forfeited.

Seizures to be void, unleſs the party ſeizing give bond.

III. *Be it further enacted,* That when any veſſel ſhall arrive within any harbour or port of this Commonwealth, having on board loaf ſugar not the manufacture of ſome one of the United

When veſſels arrive having loaf ſugar on board, directions how to proceed.

States of *America*, the maſter of ſaid veſſel, or whoever ſhall make entry of her cargo at the naval-office, ſhall, in his manifeſt of ſaid cargo, include the quantity of ſuch loaf ſugar on board his ſaid veſſel, with the packages, marks and numbers of loaves, and enter them as for exportation in the ſame veſſel; from whence it ſhall not be taken, unleſs as is before herein provided in caſe of diſtreſs.

Duty of naval officers, previous to granting permits to unlade.

And it ſhall be the duty of the naval-officer previous to his granting permit to unlade the reſidue of the cargo on board ſaid veſſel, to take a bond of the perſon making the entry, with one ſufficient ſurety, in a ſum equal to four times the value of ſaid ſugar, conditioned, that the ſame ſhall not be taken out of ſaid veſſel while within any port or harbour of this Commonwealth, and that after ſaid veſſel may be cleared out, it ſhall not be landed in any port of this Commonwealth.

Naval or Impoſt Officers authorized to go on board any veſſel and make enquiry, &c.

IV. *Be it further enacted*, That when any veſſel ſhall come within any port, harbour, river, creek or inlet in this Commonwealth, it ſhall be lawful for any naval-officer, or any officer of impoſt and exciſe, or his deputy, to go on board ſaid veſſel, commanding aſſiſtance when it may be neceſſary, and to make enquiry of every circumſtance relative to ſaid veſſel, her cargo and deſtination; and where any thing may appear to ſaid officer unſatisfactory, he is hereby empowered to appoint one or more perſon or perſons, to tarry on board ſaid veſſel until entry is regularly made of her cargo, or until ſhe departs from ſaid place.

Exciſe remitted on brown ſugars refined by ſugar boilers.

V. *And be it further enacted by the authority aforeſaid*, That the exciſe of *half a penny* on a pound, impoſed on all brown ſugars conſumed in this Commonwealth, ſhall be remitted to all ſugar boilers or refiners of ſugar, upon ſuch brown ſugars as ſhall be by them refined and manufactured into loaf ſugar, within this Commonwealth; and the ſaid ſugar refiners ſhall make oath to the quantity of brown ſugar, ſo manufactured and refined by them, when they ſhall be called upon to ſettle their accounts with the collectors of exciſe.

Loaf-ſugar exported by water to be inſpected previous thereto

VI. *Be it likewiſe enacted by the authority aforeſaid*, That all loaf ſugar manufactured within this Commonwealth which is to be exported by water, ſhall, previous thereto, be inſpected by ſome perſon appointed by the Governour and Council, who ſhall receive *two pence* by the hundred, for a thouſand weight, and *three pence* an hundred for a ſmaller quantity; and a certificate ſhall be returned by the inſpector to the collector, certifying that the loaf ſugar ſo to be exported is good and merchantable; and on ſuch certificate being produced, the manufacturer or owner of ſuch loaf ſugar, giving bond as the law now directs on the exportation of exciſed articles, ſhall receive a diſcharge of the exciſe thereon from the Collector.

Governour and Council to appoint inſpectors

VII. *Be it further enacted*, That the Governour, with advice of Council, be, and he is hereby empowered to appoint one or more ſuitable perſon or perſons, in any town within this Commonwealth where he may think proper, for the purpoſe of inſpecting loaf ſugar, as is herein before directed; and every inſpector, before he

he enters on the duties of his office, ſhall be ſworn before ſome Juſtice of the Peace to the faithful diſcharge of the ſame.

VIII. *And be it further enacted by the authority aforeſaid,* That all forfeitures and penalties incurred by this or any other act for the encouragement of the commerce, navigation and manufactures of this Commonwealth, ſhall be recovered by libel, complaint, action of debt, or the caſe, before any Court of Common Pleas within the county where ſuch ſeizure ſhall be made, as the nature and circumſtances of the caſe may require. Forfeitures how recovered.

IX. *And be it further enacted,* That a duty of exciſe of *one half penny* per pound ſhall be paid for every pound of loaf ſugar which ſhall be manufactured, uſed or conſumed within this Commonwealth, in addition to the exciſe duty already by law impoſed on the ſame, to be collected by the collectors of exciſe duties, in the ſame manner as other exciſes are collected; and the ſame remiſſion of this additional exciſe duty ſhall be allowed in caſe of exportation of loaf ſugar, by water, as by law is already provided, in caſe of exportation of other exciſed articles in the ſame way. Additional duty on loaf ſugar. Remiſſion of duty in caſe of exportation.

[This act paſſed *November* 30, 1785.]

An Act repealing an Act paſſed in the Year of our Lord, one Thouſand Seven Hundred and Eighty-three, intitled "An Act for raiſing by Lottery, the Sum of *three Thouſand Pounds*, for the Purpoſe of building a Glaſs Houſe, and promoting the Manufacture of Crown and other Glaſs, in *Boſton*;" and for the Purpoſe of promoting the Manufacture of Crown and other Glaſs, within this Commonwealth.

WHEREAS it appears that the means adopted in and by the act referred to, in the title hereof, did not anſwer the purpoſes intended; and that Robert Hewes, *for whoſe uſe the Lottery aforeſaid, was granted, and to whom was given the excluſive right of manufacturing glaſs within this Commonwealth, for the term of ſeven years, from the date of the ſaid act, has relinquiſhed every privilege and advantage to which he was intitled in and by the ſaid act:* Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the act aforeſaid, be repealed, and it hereby is repealed, and rendered null and void. Former act repealed.

And whereas it is of the higheſt importance that all uſeful manufactures, ſhould be encouraged and promoted within this Commonwealth. And whereas the ſetting up a glaſs houſe, and the undertaking the manufacture of glaſs within this State, may be attended with great riſque and expence. And whereas *William Phillips, Edward Payne, Thomas Walley, Samuel Breck, John Gore, Thomas Dawes,* Preamble.

Dawes, jun. Eſquires, *Jonathan Amory*, *John Amory*, *John Andrews*, *Henry Higginſon*, merchants, and the aforeſaid *Robert Hewes*, all of *Boſton*, in the county of *Suffolk*, have repreſented to this Court, that they have formed a copartnerſhip, and raiſed a fund, for the purpoſe of erecting a glaſs houſe, and manufacturing all ſorts of glaſs within this Commonwealth: Provided they can be ſecured in the excluſive right of ſuch manufacture for the term of fifteen years And whereas it appears to this Court, that ſuch manufacture would be greatly advantageous to this Commonwealth: Therefore,

Excluſive right of manufacturing glaſs, for 15 years, granted to *William Phillips*, and others.

II. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That they the ſaid *William Phillips*, *Edward Payne*, *Thomas Walley*, *Samuel Breck*, *John Gore*, *Thomas Dawes*, jun. *Jonathan Amory*, *John Amory*, *John Andrews*, *Henry Higginſon* and *Robert Hewes*, their heirs, executors, adminiſtrators, and aſſigns, ſhall have and enjoy, at ſuch place or places within this State, and in ſuch manner as they, or the major part of them ſhall agree upon, the ſole and excluſive right of manufacturing all ſorts of glaſs and glaſs ware, within this Commonwealth, for and during the full term of fifteen years from the date of this act.

Stock exempted from taxes for five years.

III. *And be it further enacted by the authority aforeſaid*, That the ſtock employed in erecting buildings and eſtabliſhing the manufactory, as aforeſaid, and the buildings erected, and the ſtock employed in the ſaid manufactory, be, and they hereby are exempted from all taxes for the term of five years from the time the ſaid proprietors ſhall eſtabliſh their manufactory, and commence the manufacture of glaſs as aforeſaid.

And whereas it may be highly injurious to the manufacture aforeſaid, if the artificers and workmen employed therein, ſhall be impellable at any time to neglect their work in the manufactory aforeſaid: Therefore,

Artificers and workmen exempted from military duty.

IV. *Be it further enacted by the authority aforeſaid*, That all the artificers and workmen of every kind employed in the ſaid manufactory, be, and they hereby are exempted from all military duty, during the time of their being employed in the ſaid manufactory.

Penalty for manufacturing glaſs without the conſent of ſaid *Phillips* and others.

V. *And be it further enacted*, That no perſon ſhall from and after the paſſing this act, and during the ſaid term of fifteen years, manufacture any kind of glaſs or glaſs ware, without the conſent or licenſe of the ſaid *Phillips*, *Payne*, *Walley*, *Breck*, *Gore*, *Dawes*, *Amory*, *Andrews*, *Amory*, *Higginſon*, and *Hewes*, their heirs, executors, adminiſtrators and aſſigns, or the major part of them, firſt had and obtained for that purpoſe; and every perſon ſo offending, ſhall forfeit and pay the ſum of *five hundred pounds*, for each offence, to be recovered in an action of debt, in any Court proper to try the ſame, by the ſaid *Phillips*, *Payne*, *Walley*, *Breck*, *Gore*, *Dawes*, *Amory*, *Andrews*, *Amory*, *Higginſon*, and *Hewes*, their heirs and aſſigns, or by any one or more of them, to the uſe of them, their heirs, executors, adminiſtrators and aſſigns. *Provided*, and this act is upon this condition, That the proprietors of the ſaid manufacture, ſhall employ in erecting of the ſaid buildings, and in the manufacture

Proviſo.

aforeſaid,

aforeſaid, a ſum not leſs than *three thouſand pounds*, lawful money of this Commonwealth. And further, that they ſhall erect and eſtabliſh their works and manufactory, and commence the manufacture of glaſs aforeſaid, at ſome place or places, within this State, within the term of two years from the date of this act. And *provided nevertheleſs*, That nothing in this act, ſhall extend to give the ſaid proprietors any excluſive right to the manufactory of glaſs within this Commonwealth as aforeſaid, from and after three years, from the paſſing of this act, no longer than the ſaid proprietors, their executors, adminiſtrators and aſſigns, ſhall annually after the expiration of the ſaid three years, within this Commonwealth, manufacture for ſale, glaſs ware, to the annual amount of *five hundred pounds*, at the leaſt. Further proviſo.

VI. *And it is further enacted*, That this act ſhall be deemed and taken to be a publick act, and as ſuch ſhall be officially conſidered, and taken notice of, by the ſeveral Courts of law within this Commonwealth, without the ſame being ſpecially pleaded. This act ſhall be deemed & taken as a publick act.

[This act paſſed *July* 6, 1787.]

An Act more effectually to prevent the Deſertion of *French* Sailors.

WHEREAS the deſertion of French *ſailors has of late become very frequent, which if not prevented, muſt not only greatly injure the navy of his Moſt Chriſtian Majeſty, but the commerce of his ſubjects*: Therefore, Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any maſter of a veſſel, or others, ſhall, at any time after the publication of this act, carry off in any veſſel, or otherwiſe tranſport, or cauſe to be tranſported or conveyed out of this Commonwealth, any ſailor or ſailors, ſubjects of his Moſt Chriſtian Majeſty, belonging to the marine of *France*, or any *French* ſhip or veſſel, knowing them to be ſuch, without having obtained permiſſion from the Conſul-General of *France*, or his Vice-Conſul, or without having enrolled the name or names of the perſon or perſons ſo tranſported, or conveyed out of this Commonwealth, in the naval-office of the port from which he or they ſhall be ſo tranſported or conveyed, at leaſt four days before ſuch tranſportation or conveyance, or who ſhall enroll ſuch ſailor or ſailors, knowingly, by any other than his or their true name or names, ſuch perſon ſhall, for every ſuch offence, forfeit and pay the ſum of *twenty pounds* for each and every ſuch ſailor ſo tranſported, to be recovered by information, bill, plaint or action at law, in any of the Courts of Record proper to try the ſame, in the county where the offence may be committed; one moiety thereof to be paid into the publick treaſury for the uſe of this Commonwealth, the other moiety to him or them that ſhall inform or ſue for the ſame. Maſters of veſſels and others prohibited from conveying any ſubjects of his Moſt Chriſtian Majeſty out of this Commonwealth. Penalty.

Juſtices of the Peace empowered upon complaint.

II. *And be it further enacted,* That when any maſter or commander of any ſhip or veſſel belonging to the navy, or to any of the ſubjects of his Moſt Chriſtian Majeſty, ſhall ſuſpect that any ſailor who may have deſerted from his ſhip or veſſel, is employed or concealed by any perſon or perſons on board any veſſel, or in any other place, any Juſtice of the Peace within the county where ſuch offence may be committed, upon complaint made on oath by ſuch maſter or commander of ſuch ſhip or veſſel, or by the Conſul-General of *France*, or his Vice-Conſul, ſhall iſſue his warrant, directed to ſome proper officer, requiring him, with neceſſary aſſiſtants, in the day time, to ſearch ſuch ſhip, veſſel, or other place, for ſuch deſerter, and proceed thereon in the ſame manner as he by law might do in caſe of goods ſtolen and concealed: And if upon due examination and proof, it ſhall appear to ſuch Juſtice, that the perſon complained againſt, had deſerted from any ſhip or veſſel belonging to the navy of his Moſt Chriſtian Majeſty, or to any of his ſubjects, in ſuch caſe the ſaid Juſtice ſhall commit ſuch ſailor to the cuſtody of the complainant againſt him, to be conveyed to the veſſel or place from whence he deſerted.

Naval-Officers directed to enrol the names of all ſailors who may be offered to them for enrollment,

III. *And be it further enacted,* That the Naval-Officers of the ſeveral ports in this Commonwealth, ſhall keep or cauſe to be kept, a book or books, wherein they ſhall enroll, or cauſe to be enrolled, the name or names of each and every ſuch ſailor or ſailors, that any maſter of a veſſel or others, may offer to them for enrollment, with the name of the perſon or perſons purpoſing to tranſport the ſaid ſailor or ſailors out of this Commonwealth; for which enrollment of each name the ſum of *two pence* ſhall be paid; and to which book or books, the Conſul-General of *France*, or his Vice-Conſul, ſhall have free acceſs.

[This act paſſed *March* 6, 1782.]

An Act in Addition to an Act, intitled "An Act more effectually to prevent the Deſertion of French Sailors.

Power of Juſtices of the Peace.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That when any ſeaman, duly and regularly ſhipped or inliſted on board any veſſel belonging to the King of *France*, or to any of his ſubjects, and lying within any port of this State, ſhall deſert therefrom, it ſhall be in the power of any Juſtice of the Peace, within the ſame county where ſuch veſſel lies, or of any Juſtice of the Peace, in the county where ſuch deſerter ſhall be, by warrant to apprehend ſuch deſerter, and to commit him to goal, in order that he may be forth coming, and delivered by the order of the Juſtice committing him, or by any other Juſtice of the Peace, in the county where he

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ſhall be committed, to proceed on the voyage or ſervice for which he ſhall have been inliſted or ſhipped. And where any ſeaman, being a ſubject of the King of *France*, ſhall deſert as aforeſaid, and the veſſel to which he belongs, ſhall proceed on her voyage, and leave ſuch deſerter within the Commonwealth, he may be apprehended on the complaint of the Conſul or Vice-Conſul of *France*, and be committed as aforeſaid, by any Juſtice of the Peace, in any county where he may be found, and may be by the order of the Juſtice, who ſhall commit him, or by any other Juſtice of the ſame county, delivered to the Conſul or Vice-Conſul of *France*, reſiding within the State, to be by him ſent to ſome part of the dominions of the King of *France*.

Provided, That all charges ariſing on ſuch commitment, ſhall be paid by the complainant, as the ſame ſhall ariſe. And

Provided, That no Juſtice of the Peace, ſhall grant any order for the delivery of any perſon as aforeſaid, until ſatisfactory evidence is produced to the ſaid Juſtice, that the priſoner is a deſerter from ſome veſſel, belonging to the King of *France*, or to his ſubjects, as aforementioned. Proviſo.

[This act paſſed *March* 2, 1787.]

An Act, for the Regulation of Seamen.

WHEREAS great loſs and damage is frequently occaſioned to trade and navigation, by ſeamen deſerting their employ or voyage they are entered upon, or being taken off from the ſame, by arreſt of debt or pretence thereof: For remedy whereof, Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That if any inn-keeper, victualler, ſeller of wine or ſtrong liquors, ſhop-keeper or any other perſon whatſoever, ſhall truſt or give credit to any mariner or ſeaman, belonging to any ſhip or other veſſel, without the knowledge and allowance of the maſter or commander thereof, no attachment or any other proceſs for any debt ſo contracted without knowledge and allowance as aforeſaid, ſhall be granted againſt, or ſerved upon the perſon of ſuch mariner or ſeaman, until he ſhall have performed the voyage he is then entered upon, and be diſcharged of the ſame; and every proceſs iſſued contrary hereunto and the ſerving thereof, ſhall be deemed and adjudged utterly void in law. And any Juſtice of the Peace within the ſame county before whom it ſhall be made to appear that any mariner or ſeaman is committed or reſtrained upon proceſs granted for any debt or pretence of debt made whilſt he was engaged and actually entered and in pay on any voyage, ſhall forthwith order his releaſe. No attachment or other proceſs for debt, to be ſerved upon any ſeaman, when engaged in a voyage.

II. *Be it further enacted*, That if the maſter or commander of any ſhip or other veſſel, ſhall ſhip any ſeaman, knowing him to be firſt entertained and ſhipped on board another ſhip or veſſel, or after notice thereof given him, ſhall not forthwith diſmiſs him, every ſuch maſter or commander ſo offending, being thereof convicted, Penalty for ſhipping ſeamen, knowing them to belong to other veſſels.

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ſhall forfeit and pay the ſum of *five pounds*, to the uſe of him or them who ſhall ſue for the ſame, in any Court of Record proper to try the ſame; and ſuch ſeaman ſo ſhipping himſelf, being under the obligation of a former contract, ſhall forfeit and pay the value of one month's wages that he ſhall ſo agree for, to be recovered, employed and diſpoſed of in manner as aforeſaid.

Seamen neglecting their attendance and duty, when engaged.

III. *Be it further enacted*, That if any mariner or ſeaman having ſhipped himſelf on board any ſhip or other veſſel which hath been launched, or is actually preparing for ſea, to proceed in any voyage, and under pay, (the ſame being made to appear by his hand ſet to the maſter's book, ſhipping paper or other writing of ſuch agreement) ſhall neglect his attendance and duty on board, and abſent himſelf from his ſaid ſervice, upon complaint thereof made on oath by the owner, maſter, or other officer of the ſaid ſhip or veſſel, to any Juſtice of the Peace within the ſame county, ſuch Juſtice is hereby empowered to cauſe ſuch mariner or ſeaman, to be forthwith brought before him by warrant, and upon conviction of his abſenting himſelf as aforeſaid, to commit him to priſon, that he may be ſecured, and forth-coming to proceed on the voyage he has ſo agreed to, and to be delivered by order of the Juſtice that committed him, or ſome other Juſtice in the ſame county.

Penalty.

[This act paſſed *July* 5, 1784.]

An Act eſtabliſhing Naval-Offices in this Commonwealth, and for the repealing Laws made for that Purpoſe.

Naval-Offices eſtabliſhed.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That within the ſeveral ſea-ports of *Boſton, Salem, Marblehead, Newbury-Port, Glouceſter, Ipſwich, Beverly, York, Penobſcot, Pepperelborough, Falmouth*, in the county of *Cumberland, Boothbay, Goldſborough, Machias, Paſſamoquaddy, Bath, Plymouth, Barnſtable, Dartmouth, Dighton, Edgartown*, and *Sherburne*, in the county of *Nantucket*, within this Commonwealth, an office be, and hereby is eſtabliſhed, to be called and known by the name of the Naval-Office.

Naval-Officers to give bond and be ſworn.

II. *And be it enacted by the authority aforeſaid*, That every perſon who ſhall be appointed to diſcharge and execute the duties of a Naval-Officer, before he enter on the duties thereof, ſhall give bonds with ſufficient ſureties to the Treaſurer of this Commonwealth, in the ſum of *one thouſand pounds*, for the faithful diſcharge of the truſt repoſed in him; and alſo ſhall be thereunto ſworn before ſome Juſtice of the Peace, who is hereby empowered to adminiſter the oath, and directed to return a certificate thereof to the Secretary of this Commonwealth.

Their duty.

III. *Be it further enacted by the authority aforeſaid*, That it ſhall be the duty of every Naval-Officer, who is or may be choſen and qualified

qualified as aforeſaid, to grant regiſters for, and to enter and clear ſhips and other veſſels trading to or from this Commonwealth, to take manifeſts on oath of all cargoes exported or imported, and keep fair records thereof, to grant bills of health when deſired, to take bonds in adequate penalties when bonds are by law required, and to do and perform all that by this or any other act or acts is or may be required.

Naval-Officers empowered to appoint deputies and to be accountable.

IV. *Be it further enacted by the authority aforeſaid*, That the Naval-Officers who are or may be appointed, be, and they are hereby ſeverally empowered, to appoint one or more deputies within their reſpective diſtricts, to do the buſineſs aſſigned in this act, to the Naval-Officers, or any part thereof. And the Naval-Officers ſhall ſeverally be accountable for the conduct of their reſpective deputies; and every deputy before he proceeds to the execution of his office, ſhall be ſworn to the faithful diſcharge thereof, before ſome Juſtice of the Peace; and the deputies ſhall be paid for their ſervices by the Naval-Officers who ſhall ſeverally appoint them.

Deputies to be ſworn.

Office hours.

V. *Be it further enacted by the authority aforeſaid*, That the ſeveral Naval-Officers within this Commonwealth, ſhall either by themſelves or their reſpective deputies, keep their offices open from nine of the clock in the morning till one in the afternoon, and from three in the afternoon till ſun ſet, the Lord's days excepted.

To keep a liſt of legal fees in open view.

Penalty for delay in entering or clearing.

VI. *Be it further enacted by the authority aforeſaid*, That all Naval-Officers ſhall conſtantly keep a liſt of legal fees expoſed to open view in their reſpective offices; and in caſe any ſuch officer ſhall neglect ſo to do, or ſhall directly or indirectly demand or take any greater fee than by law is or may be allowed, for each and every ſuch offence he ſhall forfeit and pay the ſum of *twenty pounds*; or if any Naval-Officer ſhall unneceſſarily delay the entering or clearing any ſhip or veſſel, on conviction thereof, he ſhall be liable to pay the damages ariſing therefrom, with coſts, to be recovered by action in any Court proper to try the ſame.

Ports, &c. where no naval-office is eſtabliſhed, how to be conſidered.

VII. *Be it further enacted by the authority aforeſaid*, That all ports, harbours, havens, creeks and inlets within this Commonwealth, in which no Naval-Office is or may be eſtabliſhed, ſhall be conſidered as belonging to the next or neareſt port in which a Naval-Office is or may be eſtabliſhed; any uſage or cuſtom to the contrary notwithſtanding.

Proviſo.

Provided nevertheleſs, That where any diſpute or difficulty may ariſe on account of the diſtance of any port, harbour, haven, creek or inlet, from the Naval-Office, adjoining to either ſide of the ſame, the Governour with advice of the Council, be, and hereby is empowered to aſſign and ſet off ſuch port, harbour, haven, creek or inlet, to either of the Naval-Offices next adjoining.

Penalty for abuſe to naval-officers in the execution of their duty.

VIII. *Be it further enacted by the authority aforeſaid*, That if any perſon ſhall obſtruct or abuſe any Naval-Officer or deputy, in the execution of his duty, every perſon thus offending, for every ſuch offence, ſhall forfeit and pay a ſum not exceeding *one hundred pounds*, nor leſs than *ten pounds*, as the nature of the offence may be, one half thereof to ſuch officer or deputy, and the reſidue to the uſe of

the Commonwealth, to be recovered by ſuch officer or deputy, or by the Attorney-General, by action of debt, in any Court proper to try the ſame.

Commanders of veſſels, before breaking bulk to enter at the naval-office, an account of their veſſels, &c.

IX. *Be it further enacted by the authority aforeſaid*, That from and after the firſt day of *September*, one thouſand ſeven hundred and eighty-four, the maſter or commander of every ſhip and other veſſel, which ſhall arrive in any port, harbour, or place within this Commonwealth, ſhall before breaking bulk, enter at the proper Naval-Office of the port, harbour or place, an account of his ſhip or veſſel, together with a manifeſt on oath of all the goods, wares and merchandize on board the ſame; and ſhall if the ſaid ſhip or veſſel is owned by any other than a citizen of this or any of the United States of *America*, enter into bond with one ſufficient ſurety, being a citizen of this or one of the United States, in the ſum of *three hundred pounds*; conditioned, that he will obſerve, keep and obey all ordinances, acts and reſolves, either of the United States in Congreſs aſſembled, or of this Commonwealth, reſpecting trade and navigation. And the maſter or commander of any ſhip or veſſel, who ſhall preſume or attempt to break bulk or unlade any part of the goods, wares or merchandize on board the ſaid ſhip or veſſel, before he has made due entry thereof as aforeſaid, and obtained a permit therefor from the proper Naval-Office, ſhall for every ſuch offence, forfeit and pay the ſum of *five hundred pounds*, one fourth part thereof to the Naval-Officer, who is hereby empowered to ſue for and recover the ſame; and the remainder thereof to the uſe of this Commonwealth. And any Naval-Officer or his deputy is hereby empowered and directed, to take and ſeize ſuch goods, wares and merchandize, unladen before entry as aforeſaid; which goods ſhall be forfeited, one fourth part thereof to the ſaid officer, and the reſidue thereof to the uſe of this Commonwealth.

Maſter, &c. not to break bulk.

Forfeiture.

Naval-officer directed to ſeize.

Goods unladen without entry to be ſeized.

X. *Be it further enacted by the authority aforeſaid*, That if any goods, wares or merchandize, belonging to any owner or owners of any ſhip or veſſel, ſhall be unladen as aforeſaid, not only ſuch goods, wares and merchandize ſhall be ſeized and forfeited, but alſo the ſaid ſhip or veſſel, with her furniture, tackle and apparel, ſhall be ſeized and forfeited, one quarter part thereof to the Naval-Officer, who is hereby empowered to ſue for and recover the ſame, and the reſidue to the uſe of this Commonwealth.

No veſſel to depart out of port untill cleared.

XI. *Be it further enacted by the authority aforeſaid*, That from and after the firſt day of *September* next, no ſhip or other veſſel ſhall be permitted to ſail or depart out of any port, harbour, or other place within this Commonwealth, and proceed to ſea, without the maſter or commander having duly cleared out at the proper Naval-Office, the ſaid veſſel with her cargo on board, manifeſt whereof ſhall be exhibited by the ſaid maſter under oath, and left with the officer who may grant the clearance, a certificate of which clearance ſhall be delivered by the ſaid officer to the ſaid maſter or commander. And any maſter or commander of any ſhip or other veſſel, who ſhall preſume to depart with the ſaid ſhip or veſſel, from any port, harbour or place where ſuch ſhip or veſſel may be, and

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hath been entered at the Naval-Office, without having cleared out and obtained a certificate thereof as aforeſaid, ſhall upon conviction thereof forfeit and pay the ſum of *two hundred pounds*, to be recovered and applied in manner as aforeſaid. Penalty.

XII. *Be it further enacted by the authority aforeſaid*, That no entrance or clearance of any ſhip or other veſſel ſhall be made as aforeſaid, in any other than the proper Naval-Office of the diſtrict where ſuch ſhip or veſſel ſhall be; any thing in this act to the contrary notwithſtanding. No entrance or clearance but at the proper naval-office.

XIII. *Be it further enacted*, That if any Naval-Officer ſhall admit to entry, or grant a clearance for any ſhip or veſſel, except ſuch ſhip or veſſel ſhall be at the ſame time within the limits of his diſtrict, he ſhall forfeit and pay for every ſuch offence, the ſum *one hundred pounds*; one moiety thereof to any perſon who ſhall ſue for the ſame, and the other moiety to the uſe of this Commonwealth. Naval-officer not to enter any veſſel out of his diſtrict, on penalty.

XIV. *Provided always, and be it further enacted by the authority aforeſaid*, That no ſhip or other veſſel belonging to any citizen in this Commonwealth, employed in the buſineſs of catching fiſh, or in carrying wood or lumber coaſtways, ſhall be ſubject to any of the aforeſaid regulations, ſaving as is hereafter provided; but inſtead thereof, the owners or maſter of every ſuch ſhip or veſſel employed as aforeſaid, and of all boats and lighters of the burthen of fifteen tons and upwards, employed in tranſporting goods, ſhall once every year, enter into good and ſufficient bonds at the Naval-Office of the port where ſuch ſhip, veſſel, boat or lighter belongs, to the Treaſurer of this Commonwealth, in the penal ſum of one *hundred pounds*, with condition to obſerve, keep and obey all ordinances, acts and reſolves of the United States, in Congreſs aſſembled, and of this Commonwealth, reſpecting trade and navigation. And ſuch owner or maſter ſhall take certificate thereof from the ſaid Naval-Officer; and ſuch ſhip or veſſel, boat or lighter, the owners or maſter of which ſhall not have entered into ſuch bond, and taken ſuch certificate thereof, ſhall be forfeited to the uſe of this Commonwealth; and ſuch certificate ſhall be deemed a full ſufferance and clearance of the ſame ſhip, veſſel, boat or lighter, to paſs and repaſs from any port, harbour or place within the Commonwealth, for the term of one year from the date of the bond therein referred to, and no longer. *Provided*, That the maſter of ſuch ſhip, veſſel, boat or lighter, ſhall report to the Naval-Officer from time to time, his entering within his diſtrict. Provided, that maſters of fiſhing veſſels, &c. employed coaſtways, be obliged only to give bond every year. Proviſo.

XV. *Be it further enacted*, That every ſhip or other veſſel of the burthen of fifteen tons or upwards, owned by the citizens of this Commonwealth, ſhall be duly regiſtered: and that no ſhip or other veſſel's name ſhall be changed after regiſtering, without regiſtering ſuch ſhip or veſſel anew, and delivering up the former regiſter to be cancelled. And in caſe there be an alteration of property in part or in whole, by ſale after regiſtering, ſuch ſale ſhall be acknowledged by indorſement on the regiſter, before the Naval-Officer of the port where ſuch veſſel may be, or made before one or more witneſ- Every veſſel of 15 tons or upwards to be regiſtered.

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ſes, and recorded within twenty days in theſaid Naval-Office, upon penalty of forfeiting the ſum of *ten pounds*, to be paid by the purchaſer to the uſe of this Commonwealth. And whenever there may be a change of the maſter or commander of any ſhip or other veſſel, the Naval-Officer ſhall endorſe the ſame on the back of the regiſter.

Penalty for forging any certificate. &c.

XVI. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall forge, eraſe or falſify any certificate, cocket or permit, for any veſſel or goods, wares or merchandize, or ſhall knowingly make uſe thereof, or knowingly exhibit any falſe manifeſt, ſuch perſon ſhall forfeit and pay for every ſuch offence, a ſum not exceeding *five hundred pounds*, nor leſs than *fifty pounds*, one fourth part thereof to the Naval-Officer in whoſe diſtrict the offence is committed, and who is hereby empowered to ſue for and recover ſuch forfeiture in any Court proper to try the ſame, and the remainder thereof to the uſe of this Commonwealth.

Naval-officers empowered to ſecure the duties on the lading of veſſels novering on the coaſt.

XVII. *And be it further enacted by the authority aforeſaid*, That from and after the firſt day of *September* next, if any ſhip or veſſel laden with, or having on board cuſtomable goods, ſhall be hovering on the coaſts of this Commonwealth, within the limits of any port thereof, and not proceeding on her voyage, (wind and weather permiting) it ſhall be lawful for the Naval-Officer of ſuch port to go on board ſuch ſhip or veſſel, and take an account of the lading, and demand ſecurity of the maſter, by his own bond to the Treaſurer of this Commonwealth, to the uſe thereof, with condition that ſuch ſhip or veſſel ſhall (as ſoon as wind and weather, and the ſtate of ſuch veſſel doth permit) proceed regularly on her voyage. And that he will produce to the ſaid Naval-Officer within a reaſonable time, to be expreſſed in the bond, a certificate from the proper officer of the port where ſuch goods were landed, that they were legally entered. And if ſuch maſter or commander ſhall refuſe to enter into ſuch bond, or ſhall not proceed on ſuch voyage (as ſoon as the wind and weather and the ſtate of ſuch veſſel will permit) all the cuſtomable goods on board of ſuch veſſel may be taken out and ſecured by the Naval-Officer, until the duties thereon are ſecured to government; and the charges ariſing by the removal and ſecuring ſuch goods, ſhall be paid by the maſter or commander of ſuch ſhip or veſſel.

Naval-officers to render a tranſcript of all entries, &c. to the Secretary, once in ſix months.

XVIII. *Be it further enacted by the authority aforeſaid*, That the ſeveral Naval-Officers within this Commonwealth, ſhall once in every ſix months at leaſt, eſtimating the ſame from the day of their being choſen, render to the Secretary of this Commonwealth, a fair tranſcript of all the entries and clearances made at their reſpective offices, which tranſcript ſhall contain an exact account of all the veſſels of every denomination, their burthen, where owned, and the names and numbers of mariners by whom each ſhall be navigated. Alſo a particular account of all goods, wares and merchandize, that may have been entered and cleared within the ſaid time at their ſeveral offices.

Be

XIX. *Be it further enacted by the authority aforeſaid,* That if any Naval-Officer ſhall neglect to make ſuch returns to the ſaid Secretary for two half years ſucceſſively, he ſhall be rendered incapable of being again elected to that office, unleſs ſuch officer ſhall give ſufficient reaſon for his neglect. Penalty for neglect.

XX. *And be it further enacted by the authority aforeſaid,* That the Naval-Officer of each diſtrict, ſhall once every week make a return to the collector of exciſe, of the county in which ſuch diſtrict may be, of all veſſels by him entered or cleared, with copies of the manifeſts of all goods, wares and merchandize, entered or cleared at his office, on penalty of *three pounds* for every ſuch neglect, to be ſued for and recovered in any Court proper to try the ſame, by the ſaid collector, whoſe duty it ſhall be to proſecute; one moiety of the ſaid fine to be to the uſe of the ſaid collector, the other moiety to the uſe of this Commonwealth; which accounts ſo tranſmitted by the Naval-Officer, ſhall be entered regularly by the collector, in a book to be kept for that purpoſe, mentioning the times when received; and once in every ſix months, the ſeveral collectors of exciſe within this Commonwealth, ſhall tranſmit to the Secretary of this Commonwealth, a fair account taken from the ſaid books of all entries and clearances ſo received. And to return all veſſels entered, &c. to the collectors of exciſe, once every week, on penalty. Collectors to tranſmit a fair account of ſuch entries, &c. once in ſix months, to the Secretary.

XXI. *And be it further enacted,* That from and after the firſt day of *September,* one thouſand ſeven hundred and eighty-four, all laws heretofore in being for the eſtabliſhment of Naval-Offices in this Commonwealth, ſhall be repealed and made null and void. Laws eſtabliſhing naval-offices repealed.

Provided nevertheleſs, That for any forfeiture incurred by a violation of any of the ſaid laws, before the firſt day of *September* next, a proſecution may be commenced or purſued, and judgment thereon given after that time; any thing in the foregoing act to the contrary notwithſtanding. Proviſo.

[This act paſſed *July* 1, 1784.]

An Act for Regulating the Fees and Forms in the Naval Offices within this Commonwealth.

[That part of this act reſpecting the Fees is repealed. See next act.]

AND be it further enacted, That the forms following be uſed in the ſaid offices, when forms are required, *viz.*

Commonwealth of *Maſſachuſetts.*

IN purſuance of an act of this Commonwealth, made and paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-four, *Providing,* That all veſſels of fifteen tons and upwards, ſhould be provided with regiſters, of in the maketh oath that the whereof is at preſent maſter, being a ſterned veſſel, of the burthen of tons, or thereabouts, was built at in the year of our Lord, one thouſand ſeven hundred and and that at preſent owner thereof. Form of a Regiſter.

Sworn before and recorded by ——— ———.

W w w Dated

Dated at the day of in the year of our Lord, one thouſand ſeven hundred and and in the year of the Independence of the United States of *America*.

——— ———, Governour.

Atteſt, ——— ———, Secretary.

Form of a Bond given by Coaſters.

KNOW all men by theſe preſents, That are holden and ſtand firmly bound unto Eſq. Treaſurer of the Commonwealth of *Maſſachuſetts*, in the ſum of *one hundred pounds* lawful money, to be paid unto the ſaid Eſq. or his ſucceſſor in the ſaid office, for the uſe of the ſaid Commonwealth. To which payment well and truly to be made, we bind ourſelves, our heirs, executors and adminiſtrators (jointly and ſeverally) firmly by theſe preſents. Sealed with our ſeals. Dated at the port of in the ſaid Commonwealth, the day of A. D. 178 .

The condition of this obligation is ſuch, That whereas by a law of this Commonwealth, made and paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-four, entitled, "An act for eſtabliſhing Naval-Offices in this Commonwealth:" *It is enacted*, That the owner or maſter of every ſhip or veſſel employed in the fiſhing buſineſs, or in carrying wood or lumber coaſt ways, and of all boats and lighters above the burthen of fifteen tons, employed in tranſporting goods, ſhall once every year enter into good and ſufficient bonds at the Naval-Office of the port where ſuch ſhip, veſſel, boat or lighter belongs, to the Treaſurer of this Commonwealth, in the penal ſum of *one hundred pounds*, with condition to obſerve, keep and obey all ordinances, acts and reſolves, either of the United States in Congreſs aſſembled, or of this Commonwealth, reſpecting trade and navigation. And whereas the ſaid of the burthen about tons, propoſes to employ the ſaid in the buſineſs of for the term of one year from the date hereof. Now therefore, if the ſaid ſhall well and truly obſerve and perform the conditions aforeſaid, in the ſaid act mentioned, according to the true intent and meaning thereof, then this obligation to be void and of no effect, otherwiſe to remain in full force and virtue.

Signed, ſealed and delivered in preſence of } ——— ———.
——— ———.

———.

Commonwealth of *Maſſachuſetts*.

Port of ———.

Form of a Certificate for Coaſters, &c.

THESE certify all whom it may concern, That of the burthen tons, or thereabouts, navigated with men, which the ſaid propoſes to employ in the buſineſs of for the term of one year from the date hereof, has this day entered into bonds at my office, to the Treaſurer of this Commonwealth, agreeably to a law of the ſame, entitled, "An act for eſtabliſhing a Naval-Office in this Commonwealth;" the ſaid has therefore full ſufferance to paſs and repaſs from any port, harbour or place,

to

to any other port, harbour or place, within this Commonwealth, for the term of one year from the date hereof, and no longer.

Given under my hand and ſeal of office, the ——— day of —— in the year of our Lord, one thouſand ſeven hundred and .

——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts*.

Port of ———.

To all to whom theſe preſents ſhall come.

———, Naval Officer for the port of in the ſaid Commonwealth, ſends, *Greeting*.

WHEREAS maſter of the burthen about tons, and navigated by men, now lying in the harbour of and by GOD's grace, bound for is now ready to proceed on the ſaid voyage; and it being juſt and proper to prevent, if poſſible, any ſuſpicions that may ariſe in the minds of any perſons, on account of any ſuppoſed infectious diſeaſe on board the ſaid veſſel: Form of a Bill of Health.

Therefore know ye by theſe preſents, That there is not in the ſaid port of any peſtilence or contagious diſtemper whatever.

In teſtimony whereof, the ſaid has hereunto affixed the ſeal of his office, and ſubſcribed his name.

Dated at aforeſaid, the day of and in the year of *American* Independence, and in the year of our Lord, one thouſand ſeven hundred and .

——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts*.

Port of ———.

PERMIT the maſter, navigated with men, mounted with guns, bound for to paſs the forts and guards. ——— ———, Naval Officer. Form of a Permit to paſs forts, &c.

To the commanding officer of the ſeveral fortreſſes and guards in the harbour of .

Commonwealth of *Maſſachuſetts*.

Port of ——.

THESE certify all whom it doth concern, That maſter or commander of the burthened tons, or thereabouts, navigated with men, mounted with guns, has permiſſion to depart from this port, with the following articles, *viz.* Form of a Clearance.

And theſe are further to certify, That it appears by the original regiſter, now produced to me, that the above mentioned was regiſtered at the day of A. D. 178 .

Given under my hand and ſeal of office, at aforeſaid, the day of in the year of our Lord, one thouſand ſeven hundred and ——— ———, Naval Officer.

Commonwealth

Commonwealth of *Maſſachuſetts.*

Port of ——.

Form of a Cocket.

THIS may certify, That maſter of the who cleared out from this office the day of A. D. 178 for has permiſſion to take on board the ſaid

Given under my hand and ſeal at aforeſaid, the day of A. D. 178 . ——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts.*

Port of ——.

Form of a Short Clearance.

THIS may certify, That maſter of the now in the harbour of and bound for is hereby permitted to take on board the ſaid ſtores, and proceed from hence to aforeſaid. ——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts.*

Port of ——.

Form of a Permit to load.

THIS may certify, That maſter of the has permiſſion to take on board the ſaid deſigned to be ſhipped to the following articles, viz.

Given under my hand at aforeſaid, this day of 178 . ——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts.*

Port of ——.

Form of a Permit to unload.

THIS may certify, That maſter of the lately arrived from has conformed to the laws of this Commonwealth, ſo far as to have permiſſion to unload from the ſaid the following articles, viz.

Given under my hand at aforeſaid, this day of 178 . ——— ———, Naval Officer.

Commonwealth of *Maſſachuſetts.*

Port of ——.

Form of a Certificate to cancel a Bond.

THESE may certify, That there hath been landed here, out of the whereof is maſter, which appears by certificate, dated the day of to have been ſhipped and laden at the port of .

Given under my hand and ſeal, at the day of in the year of our Lord, one thouſand ſeven hundred and ——— ———, Naval-Officer.

Former laws & reſolves relating to forms and fees, repealed.

And it is further enacted, That all the laws and reſolves heretofore made, ſo far as they relate to the forms and fees in the Naval-Offices in this Commonwealth, from and after the firſt day of *Auguſt* next, ſhall be repealed and be null and void.

[This act paſſed *July* 7, 1784.]

An

An Act for Regulating the Fees in the Naval Offices within this Commonwealth, and repealing the Laws heretofore made for that Purpose.

Fees eſtabliſhed.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That there be demanded and received in each Naval Office in this Commonwealth, the fees following, and no greater, *that is to ſay:*

For every regiſter, and recording the ſame, *two ſhillings*, excluſive of the Secretary's fee.

For endorſing every regiſter, and recording the ſame, *ſix pence.*

For entering every ſhip and other veſſel from any port in this Commonwealth, *one ſhilling.*

For clearing every ſhip and other veſſel for any port in this Commonwealth, *one ſhilling.*

For entering every ſhip and other veſſel from any other of the United States of *America, two ſhillings.*

For clearing every ſhip and other veſſel for any other of the United States of *America, two ſhillings.*

For entering every ſhip and other veſſel from a foreign voyage, *five ſhillings.*

For clearing every ſhip and other veſſel on a foreign voyage, *five ſhillings.*

For every bond, *one ſhilling.*

For every certificate to cancel a bond, *ſix pence.*

For every permit to unlade, *ſix pence.*

For every cocket, *ſix pence.*

For every bill of health, *one ſhilling.*

For every bond and certificate, coaſtwiſe, and for every veſſel employed in the fiſhery, to be paid annually, *one ſhilling.*

For every paſs by any garriſon or guard (coaſting and fiſhing veſſels excepted) *ſix pence.*

For receiving and entering the report of every veſſel carrying wood and lumber coaſtwiſe, and a certificate thereof, *ſix pence.*

Part of a former act repealed.

II. *And be it further enacted by the authority aforeſaid,* That ſo much of an act, entitled, "An act for regulating the fees and forms in the Naval Offices within this Commonwealth," paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-four, as reſpects the fees of the ſaid offices, be, and hereby is repealed.

[This act paſſed *June* 25, 1787.]

An Act for eſtabliſhing a Comptroller-General.

Preamble.

WHEREAS it is indiſpenſibly neceſſary that government ſhould, at all times, have regular and well-authenticated intelligence, of the navigation, trade and commerce of the State, in order that they may be able to determine, with preciſion, and with juſtice to the community, what regulations ought to be made therein, and what encouragement ought to be given to our own produce and manufactures, either by bounties, or by the prohibition of any foreign articles:

Comptroller-General to be annually appointed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That there ſhall be appointed by the General Court, in their preſent ſeſſion (the choice to originate in either Houſe, and to be ſent to the other Houſe for concurrence, and afterward in like manner annually) an officer, whoſe buſineſs it ſhall be to ſuperintend the conduct of all the Naval-Officers, the Impoſt and Exciſe-Officers, throughout this Commonwealth; to demand of them a ſettlement of all their public accounts, agreeably to law; to point out to them a ſyſtem of official book-keeping; and in general to give them ſuch inſtructions relative to their official papers and conduct, in addition to thoſe already pointed out by law, as he ſhall deem neceſſary in order to eſtabliſh an uniformity of proceeding in the ſeveral offices, and to enable him to render to government, at any time, an accurate ſtatement of the navigation, trade and commerce of the State; of the revenue derived therefrom, and of the expence of collecting the ſame. And the title of ſaid officer ſhall be, COMPTROLLER-GENERAL.

His duty.

Naval-officers & impoſt & exciſe-officers, to follow his directions.

II. *Be it enacted,* That the Naval-Officers, the Impoſt and the Exciſe-Officers, be, and they are hereby required, to follow ſuch inſtructions and directions, as they ſhall from time to time, receive from the Comptroller-General; and he is particularly directed, to ſee that the Naval-Officers pay due attention to the requirements of law relative to clearing out articles for exportation.

Compt. General required to ſee that they diſcharge their duty, &c.

III. *Be it enacted,* That the Comptroller-General be, and he is hereby required, to ſee that the Naval-Officers, the Impoſt and the Exciſe-Officers, diſcharge their duties reſpectively; and if he finds any fraud, or neglect of duty, in either of the ſaid officers, he is hereby required to give information thereof to the Governour and Council, who are requeſted, authorized and empowered, to call the officer ſo complained againſt, before them, to anſwer to ſuch complaint; and if on due enquiry they ſhall find ſuch officer to be guilty of fraud, or neglect of duty, they ſhall diſmiſs him from his office, and fill up the vacancy immediately. And when any Naval-Officer, Impoſt or Exciſe-Officer, ſhall be diſmiſſed for fraud or neglect of duty as aforeſaid, the Comptroller-General ſhall put his bond in ſuit. And when any deputy ſhall be guilty of fraud or neglect of duty, and the ſame ſhall be repreſented and proved as aforeſaid, the Governour and Council ſhall order the conſtituent of ſuch

deputy

deputy to diſmiſs him, and the Comptroller-General ſhall put the bond of ſuch conſtituent in ſuit alſo, in order that the Commonwealth may receive no detriment by any fraud or neglect of duty as aforeſaid.

Compt. General to direct collectors in what manner to keep their books.

IV. *Be it enacted,* That the Comptroller-General be, and he is hereby inſtructed to direct the Collectors to keep their books in ſuch a manner as that it ſhall appear how much money is received for exciſe, how much for impoſt, and how much for ſeizures, fines, forfeitures and licences.

—— to make them allowance, on ſettlement.

V. *Be it enacted,* That on ſettlement of accounts with the Naval-Officers and Collectors, the Comptroller-General be empowered to make them an allowance for all official account books, or books of entry.

—to poſt their returns into a proper ſet of books.

VI. *Be it enacted,* That the Comptroller-General ſhall regularly poſt into a proper ſet of books the returns he ſhall receive from the Naval-Officers and Collectors, and ſhall keep diſtinct accounts of all monies received by virtue of this act. And alſo of the allowances made to each officer; and he ſhall adjuſt and ſettle his accounts under oath with the Treaſurer, in the month of *June* annually.

——to be ſworn & to give bond.

VII. *Be it enacted,* That the Comptroller-General be ſworn to the faithful diſcharge of the duties of his office; and the Treaſurer is hereby empowered to adminiſter the oath, and alſo to demand and receive of the Comptroller-General, before he enters on the duties of his office, a bond with ſufficient ſureties, in a ſum not leſs than *ten thouſand pounds*, conditioned, that he will truly and impartially, according to his beſt ſkill and judgment, execute the buſineſs herein aſſigned him, agreeably to law.

Pay,—when eſtabliſhed.

VIII. *Be it enacted,* That the Comptroller-General ſhall receive ſuch pay for his ſervices, as ſhall be eſtabliſhed at the time of his appointment; and he ſhall begin to exerciſe the duties of his office on the firſt day of *January* next.

[This act paſſed *November* 10, 1786.]

An Act for Regulating Pilotage in ſeveral Ports in this Commonwealth.

Preamble.

WHEREAS frequent and heavy loſſes have been ſuſtained, and navigation greatly injured, for want of a well regulated pilotage in the harbours hereafter mentioned:

Governour with advice of Council, to appoint ſuitable perſons as pilots.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Governour, with advice of Council, be, and he hereby is empowered and requeſted, as ſoon as may be, to appoint ſuitable perſons as pilots for the ſeveral harbours and coaſts hereafter mentioned, *viz.* three for the port of *Boſton*, two for the port of *Salem*, two for

The number of pilots aſſigned for the ſeveral harbours and coaſts.

for the port of *Marblehead*, and two for the port of *Glouceſter*; two for the port of *Newbury-Port*; two for the port of *Plymouth*; four for the coaſts of *Nantucket*; ten for the coaſts of *Martha's Vineyard*; and to give to each of the ſaid pilots branches or warrants for the due execution of the duties of their reſpective offices, with power of ſubſtitution in certain caſes to be therein preſcribed. And ſuch deputies as ſaid branch pilots ſhall ſeverally depute, ſhall be by them reported to the Governour, for his approbation.

Pilots to have warrants, with power of ſubſtitution.

Pilots to be under oath.

II. *And be it further enacted by the authority aforeſaid*, That every pilot and deputy, appointed as aforeſaid, ſhall, before his entering upon the buſineſs of his office, take the following oath or affirmation, before ſome Juſtice of the Peace, *viz.*

Form of the oath.

YOU *A. B.* do ſwear [*or affirm, as the caſe may be*] that you will from time to time, truly and faithfully perform the duties of a pilot for the harbour or port of , according to your beſt ſkill and judgment, agreeably to the laws of this Commonweath.

So help you GOD.

Pilots to enter into bonds.

And each of the ſaid branch pilots ſhall enter into bonds, with ſufficient ſureties, to the Treaſurer of this Commonwealth, in the ſum of *one thouſand pounds*, for the due performance of the truſt repoſed in him. And every branch pilot being commiſſioned and qualified as aforeſaid, is hereby empowered and directed by himſelf or his deputy, to take charge of any veſſel or veſſels drawing nine feet of water and upwards (coaſting and fiſhing veſſels excepted) bound into any of the ports aforeſaid, and ſhall pilot ſuch veſſel or veſſels into the port aſſigned to him, firſt ſhewing to the maſter or maſters thereof, his branch or warrant, and acquainting him or them of his fees.

Branch pilots being duly authoriz'd, to take charge of veſſels drawing nine feet of water & upwards, except.

Diſtricts of the ſeveral pilots limited.

III. *And be it further enacted by the authority aforeſaid*, That the diſtricts of the ſeveral pilots be, and they are hereby limited in manner following, *viz.* the pilots for the port of *Boſton*, from the highlands of *Marſhfield*, on the ſouth, to what is uſually called *Nehant Rock*, on the north; the pilots for the ports of *Salem* and *Marblehead*, from the ſaid *Nehant Rock*, on the ſouth, to *Norman's Woe*, on the north; the pilots for the port of *Glouceſter*, from the ſaid *Norman's Woe*, round the cape to *Jabackah Bar*, ſo called; the pilots for the port of *Newbury-Port*, from *Jabackah Bar*, on the ſouth, to the *Iſle* of *Shoals*, on the north; the pilots for the port of *Plymouth*, from the highlands aforementioned, on the north, to the point of *Cape Cod*, on the ſouth; the pilots for the coaſts of *Nantucket* and *Martha's Vineyard*, to take charge of any veſſel or veſſels on the coaſts thereof, that ſhall be bound over the ſhoals.

Pilots to keep one decked boat in good repair, except for the coaſt of *Nantucket*.

IV. *And be it further enacted by the authority aforeſaid*, That each of the ſaid branch pilots ſhall always keep one decked boat in good repair, except the pilots for the coaſts of *Nantucket*, who, as well as all other branch pilots, ſhall at all times keep a ſufficient number of ſuitable row boats, for the purpoſes aforeſaid; and one of the boats for the port of *Boſton*, ſhall be ſtationed at the *Light-Houſe*

Houſe Iſland; one for the port of *Newbury-Port*, at *Saliſbury Point*, or *Plumb Iſland*; one for the port of *Plymouth*, in the harbour of *Plymouth*; two for the port of *Salem*, in the harbour of *Salem*; two at *Marblehead*; one in the harbour of *Glouceſter*; and one in *Sandy Bay*, ſo called; four for the coaſts of *Martha's Vineyard*, at *Gay Head*; four at *Holme's Hole*; and two at *Edgarton*; and all the above mentioned boats ſhall cruize on the pilot ground of their reſpective ſtations, as often as the weather ſhall permit. Boats where to be kept.

V. *And be it further enacted by the authority aforeſaid*, That the Governour with the advice of Council, be, and he hereby is empowered and requeſted, to determine and fix the fees of pilotage of the ſeveral pilots, according as the circumſtances of peace or war may require, and to ſpecify the ſame in their reſpective warrants; and alſo to tranſmit to each Naval Officer in the ports and harbours aforeſaid, a ſchedule of the ſaid fees, to be by ſuch Naval Officer hung up in his office, for publick inſpection. Governour with advice of Council, to determine the fees. Naval Officers to hang up a ſchedule of the fees in their offices.

VI. *Provided nevertheleſs, and be it further enacted by the authority aforeſaid*, That any maſter of a veſſel who may chooſe to hazard the pilotage of his own veſſel into any port, ſhall be at liberty ſo to do, ſubject however to pay ſuch pilot of the ſaid port as ſhall firſt come on board his veſſel, one half pilotage according to the fees ſpecified in his warrant; and ſuch pilot is hereby empowered, on refuſal of the payment thereof, to ſue for and recover the ſame. Proviſo.

VII. *Provided alſo, and be it further enacted by the authority aforeſaid*, That if any veſſel ſhall be within the light houſe in the port of *Boſton*, or within the chops of the harbours of *Salem*, *Marblehead* and *Glouceſter*, or within the bar at the entrance of the harbour of *Newbury-Port*, or within the gurnet at the entrance of the harbour of *Plymouth*, or within any barred harbour, before any pilot ſhall go on board, and the maſter of ſuch veſſel ſhall then decline taking a pilot, he ſhall be exempt from any fees of pilotage in the ſaid ports. Proviſo.

VIII. *And be it further enacted*, That if any veſſel, while under the charge and direction of a branch or a warrant pilot, or his deputy ſhall be loſt, caſt away, or run aground, through the unſkillfulneſs or neglect of ſuch branch or warrant pilot, or his deputy, then, and in that caſe, ſuch branch or warrant pilot ſhall be liable not only for himſelf but for his deputy (provided the ſaid deputy ſhall be the pilot of the ſaid veſſel at the time thereof) to pay the juſt value of the veſſel and her cargo, or any proportionable damage which may be ſuſtained thereby, to be ſued for and recovered by the owner or owners, or inſurer or inſurers thereof, in any Court proper to try the ſame. In caſe of loſs of any veſſel through neglect &c. pilots liable to pay the juſt value. How recovered.

IX. *And be it further enacted by the authority aforeſaid*, That if it ſhall hereafter become neceſſary for any port or ports within this Commonwealth, not mentioned in this act, to have a pilot or pilots aſſigned them, the Governour, with the advice of Council, be, and he hereby is empowered and requeſted, to appoint and commiſſion one or more pilots for every ſuch port or ports as to him ſhall appear Ports not mentioned in this act to have pilots.

Governour with advice of Council, authorized to appoint.

pear neceſſary, in the ſame manner as the pilots for the ports mentioned in this act, are directed to be appointed and commiſſioned: And the pilot or pilots ſo appointed, are hereby veſted with the ſame power and authority, and ſhall be under the ſame bonds, and ſubject to the ſame penalties, that are provided in this act for any of the pilots before mentioned.

Outward bound veſſels to be under the ſame reſtrictions.

X. *And be it further enacted by the authority aforeſaid,* That all veſſels drawing nine feet of water and upwards, bound to ſea, out of any of the ports aforeſaid, except coaſting and fiſhing veſſels, ſhall be under the ſame reſtrictions, and liable to pay the ſame fees that veſſels are under and liable to, that are bound into any of the ſame ports, and all pilots of any outward bound veſſels, ſhall be liable to ſimilar actions for damages, and ſubject to the ſame penalties for their unſkilfulneſs or neglect, that they would have been, if the ſame veſſels had been bound into any of the ports aforeſaid.

And to the intent that a ſuitable check may be had upon the pilots aforeſaid, and that they may be excited to a due vigilance in the diſcharge of the duties aſſigned them:

Governour and Council empowered to hear and determine complaints exhibited with power of ſuſpenſion.

XI. *Be it enacted by the authority aforeſaid,* That the Governour and Council be, and they hereby are empowered, to hear and determine all complaints exhibited againſt the ſaid pilots, or their deputies, or either of them, for malconduct in the premiſes, and to ſuſpend or remove them, or either of them, at their diſcretion, and to appoint others in their room, laying the reaſons therefor before the General Court, at the next ſeſſion after ſuch ſuſpenſion or removal.

[This act paſſed *July* 11, 1783.]

An Act for Repealing certain Parts of one Act regulating Pilotage, and for Repealing an Act for altering and amending the ſame.

Preamble.

WHEREAS one act made and paſſed the eleventh day of July *laſt, entitled, "An act for regulating pilotage," has not been found productive of the good effects thereby intended, ſo far as the ſame reſpects the eſtabliſhing and regulating of pilots and pilot boats for the coaſt of* Martha's Vineyard:

Part of an act for regulating pilotage, and an additional act, repealed.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſaid act, ſo far as the ſame reſpects the appointing and regulating of pilots and pilot boats for the coaſt aforeſaid, together with one other act made and paſſed the twenty-fourth day of *October* laſt, for the amendment of the ſame, be, and hereby is repealed and made null and void.

[This act paſſed *March* 16, 1784.]

An

An Act for Repealing certain Parts of an Act, entitled "An Act for regulating Pilotage in ſeveral Ports in this Commonwealth," and for otherwiſe regulating the Pilotage of the Port of *Newbury-Port*.

WHEREAS the proviſions made for regulating the pilotage for the port of Newbury-Port, *have been found inſufficient to anſwer the purpoſes intended:* Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That ſo much of an act paſſed the eleventh day of *July*, one thouſand ſeven hundred and eighty-three, entitled, "An act for regulating pilotage in ſeveral ports in this Commonwealth," as relates to the appointing and regulating of pilots and pilot boats for the port of *Newbury-Port*, be, and it is hereby repealed. Part of a former act repealed.

II. *Be it further enacted by the authority aforeſaid,* That from and after the firſt day of *January*, one thouſand ſeven hundred and eighty-ſix, no perſon ſhall undertake to pilot any veſſel into or out of the river *Merrimack*, drawing nine feet of water, or more (coaſters and fiſhing veſſels excepted) without having firſt obtained a commiſſion or branch, as is herein after provided. No perſon ſhall pilot any veſſel without having a commiſſion or branch.

III. *Be it further enacted,* That whenever any perſon ſhall obtain from the marine ſociety of *Newbury-Port*, a certificate ſigned by their Clerk, that in their opinion, or in the opinion of the major part of the members of ſaid marine ſociety, he is capable and ſuitable to undertake the buſineſs of pilotage into and out of the river *Merrimack*, the Governour, with advice of Council, be, and he is hereby empowered to grant to ſuch perſon a commiſſion or branch for him to exerciſe ſaid buſineſs as aforeſaid, and the ſame to demand and recall whenever ſaid marine ſociety, or the major part of them, ſhall certify by their Clerk that the ſaid perſon is rendered incapable or improper to be continued in ſaid buſineſs. Governour and Council to commiſſion a ſuitable perſon.

IV. *Be it further enacted by the authority aforeſaid,* That before any perſon ſhall receive ſuch commiſſion or branch, he ſhall give bond, with ſufficient ſurety, to the Treaſurer of this Commonwealth, in a ſum of *one hundred pounds*, conditioned that he will give up ſaid commiſſion or branch whenever it ſhall be demanded as aforeſaid. Perſons commiſſioned to give bond.

V. *Be it further enacted,* That if any perſon other than one having obtained a commiſſion or branch, as is herein before provided, ſhall preſume to pilot a veſſel contrary to the meaning of this act, he ſhall not be entitled to any fee for the ſame, and ſhall farther be liable to pay any damages that may accrue in conſequence of his undertaking ſo to pilot ſuch veſſel, to be recovered by the owner, aſſignee or maſter of ſaid veſſel in an action on the caſe, to be brought before any Court proper to try the ſame. Perſons piloting without being commiſſioned, not entitled to any fee.

[This act paſſed *November* 23, 1785.]

An

An Act for eſtabliſhing Public Lights, on the north End of *Plumb-Iſland*, in *Ipſwich-Bay*, in the County of *Eſſex*.

Preamble.

WHEREAS it will be of great advantage to the commerce of this Commonwealth, that two public Lights ſhould be eſtabliſhed upon the north end of Plumb-Iſland, *in* Ipſwich-Bay, *in the county of* Eſſex, *in ſuch a poſition as to form but one Light to veſſels paſſing over the bar, into* Merrimack-River:

Two ſmall light houſes to be erected.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Commiſſary-General, together with Meſſieurs *William Coombs*, *Michael Hodge*, and *William Bartlett*, of *Newbury-Port*, in the county of *Eſſex*, merchants, be, and hereby are inveſted with full powers and authority to erect and build two ſmall wooden Light-Houſes, on the north end of *Plumb-Iſland* aforeſaid, and in the poſition above deſcribed, convenient for fixing proper Lights thereon: *Provided* the expence of erecting and building the ſaid Light-Houſes ſhall not exceed the ſum of *three hundred pounds*, lawful money: And provided the ſaid Light-Houſes be ſo conſtructed, as whenever the ſaid bar ſhould ſhift, the ſaid Light-Houſes may be moved ſo as always to be kept in the poſition aforeſaid.

Proviſo.

Expence, how defrayed.

II. *Be it further enacted by the authority aforeſaid*, That the expence of building the ſaid Light-Houſes, ſhall be defrayed out of the monies which ſhall be received into the Treaſury of this Commonwealth, for the year one thouſand ſeven hundred and eighty-eight, on account of duties impoſed for the purpoſe of ſupporting and maintaining the ſeveral Light-Houſes in this Commonwealth, not before appropriated.

Commiſſary General to provide ſuitable lights. &c.

III. *And it is further enacted by the authority aforeſaid*, That when the Light-Houſes aforeſaid, ſhall be compleated, the Commiſſary-General, provide ſuitable Lights to be placed therein, and maintain them in the ſame manner, and out of the ſame funds, as the other publick Lights of this Commonwealth, are provided for and maintained; and the Commiſſary-General is hereby directed and enjoined to provide for the keeping the ſaid Light-Houſes at all times, in the poſition above deſcribed.

Proviſo.

Provided nevertheleſs, That nothing in this act ſhall oblige the Commiſſary-General, to advance any money for the ſupport of the Lights, to be erected as aforeſaid, until the debts previouſly contracted for the ſupport of the publick Lights, be firſt diſcharged out of the funds appropriated therefor; but if any perſon or perſons will advance money, for the ſupport of the ſaid Lights to be erected as aforeſaid, the Commiſſary-General, is directed to charge the money ſo advanced, to the funds.

[This act paſſed *November* 16, 1787.]

An Act making Proviſion for the building and maintaining Light-Houſes on the Sea-Coaſt of this Commonwealth, and for repealing all Laws heretofore made for that Purpoſe.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That there ſhall be paid by the maſter or owner of any veſſel not employed in the coaſting or fiſhing buſineſs, from and after the firſt day of *January* next, into the hands of the naval-officer where any veſſel ſhall clear out for any port not in this Commonwealth, previous to the clearing of the ſaid veſſel, a duty of *two pence and one half of a penny*, per ton, to be computed agreeable to the rules of carpenters meaſurement.

Tonage duty to be paid to the naval-officer, previous to the clearing of any veſſel.

II. *And be it further enacted by the authority aforeſaid,* That from and after the ſaid firſt day of *January* next, the maſter or owner of any fiſhing or coaſting veſſel, of thirty tons or upwards, ſhall every ſix months pay unto the naval-officer of the port where ſuch maſter or owner may reſide, a duty at the rate of *five pence* per annum, for each ton the ſaid veſſel may meaſure, agreeably to the rules aforeſaid; and if the maſter or owner of any ſuch coaſting or fiſhing veſſel, ſhall refuſe to pay as aforeſaid, the ſaid naval-officer is hereby empowered and directed, within thirty days after ſuch payment may become due, to ſue for and recover the ſame, in any Court proper to try the ſame.

A duty at the rate of 5d. per annum, a ton, to be paid by the maſter or owner of every fiſhing veſſel.

Provided nevertheleſs, That when any ſuch coaſting or fiſhing veſſel may be employed in any voyages, other than coaſting or fiſhing, ſo much of the annual duty ſhall be allowed by the ſaid naval-officer, as ſhall be in proportion to the time they may have thus been employed.

Proviſo.

III. *And be it further enacted by the authority aforeſaid,* That from and after the firſt day of *January* next, there ſhall be paid by the maſter or owner of any veſſel not wholly owned by ſome citizen or citizens of any of the United States, on an entry being made thereof at any naval-office within this Commonwealth, *one ſhilling* for each and every ton, carpenters meaſure, which the veſſel may meaſure, and no more.

A duty of 1s. per ton, on veſſels not wholly owned by citizens of any of the United States.

IV. *And be it further enacted by the authority aforeſaid,* That the maſter, or owner of every veſſel, chargeable with the duties of light money as aforeſaid, ſhall upon her arrival in any port in this Commonwealth, enter with the naval-officer of the port where the ſaid veſſel may arrive, the full tonage thereof, agreeably to the rules of carpenters meaſurement; and the naval-officer ſhall calculate the duties on ſuch veſſel agreeably to ſuch entry, unleſs he ſhall have any reaſon to believe that the ſaid maſter or owner has made a ſhort entry of her tonage, in which caſe the ſaid naval-officer ſhall, and he is hereby empowered and directed, to cauſe the ſaid veſſel to be meaſured by the rules of carpenters meaſurement, and if the ſaid veſſel ſhall be found to meaſure more tons than ſhe is entered for,

Maſter or owner of every veſſel, ſhall enter upon their arrival, the full tonage thereof.

then, and in that caſe, the owner or maſter who entered the ſaid veſſel, ſhall pay *three ſhillings* per ton, for each and every ton, ſhe ſhall be entered ſhort of her real meaſurement: And the ſaid naval-officers are hereby directed to give a certificate to each perſon for the receipt of the duties by him paid as required by this act.

Two per cent. allowed the naval-officer.

V. *And be it further enacted by the authority aforeſaid,* That each naval-officer ſhall be allowed *two per cent.* out of the duties he may collect as aforeſaid, and the remainder thereof he ſhall every three months pay unto the Treaſurer of this Commonwealth, and once in every year ſhall render unto the Treaſurer aforeſaid an account on oath of the monies ſo received, and make a ſettlement of the ſame; and the ſaid naval-officers ſhall each of them give bond to the Treaſurer aforeſaid, in the ſum of *one thouſand pounds,* for the faithful performance of the ſervices required of them by this act.

Remainder ſhall be paid to the Treaſurer.

Naval-officers ſhall give bond.

Duties ariſing, how appropriated.

VI. *And be it further enacted by the authority aforeſaid,* That all monies ariſing from the aforeſaid duties, ſhall be appropriated to, and kept in the treaſury, for the purpoſe of building, ſupporting and maintaining the Light-Houſes on the ſea-coaſt of this Commonwealth, and no other, and that the ſame be drawn out of the treaſury for that purpoſe, by warrant under the hand of the Governour, with the advice and conſent of Council, as often as occaſion may require; and the Treaſurer is hereby directed once in every year, to lay before the General Court an account of the monies received for the ſaid duties, with the expenditure of the ſame.

Treaſurer ſhall lay an account before the General Court once in every year.

Duty of Light-Houſe Keepers.

VII. *And be it further enacted by the authority aforeſaid,* That the perſons, who are or may be appointed from time to time, to be keepers of the Light-Houſes on the ſea-coaſt of this Commonwealth, ſhall carefully and diligently attend their duty at all times, in kindling and keeping burning the lights, from ſun ſetting to ſun riſing, and placing them ſo as they may be moſt ſeen by veſſels coming in or going out; and upon conviction of neglect of their duty before the Court of General Seſſions of the Peace within the county, ſhall be liable to be fined according to the degree or circumſtance of the offence, not exceeding *one hundred pounds,* one third part thereof to the uſe of this Commonwealth, and the other two thirds to the perſon or perſons who ſhall inform of ſuch neglect; and ſhall be alſo liable to an action of damage brought by any perſon, who may ſuffer by ſuch neglect, to be recovered in any Court proper to try the ſame.

Penalty for neglect.

Laws heretofore made, repealed.

VIII. *And be it further enacted by the authority aforeſaid,* That from and after the firſt day of *January,* in the year of our Lord one thouſand ſeven hundred and eighty-eight, all the acts heretofore made for the purpoſe of ſupporting and maintaining the Light-Houſes on the ſea-coaſt of this Commonwealth, ſhall ceaſe to be of any force or validity, excepting for the recovery of any penalties, forfeitures or ſums due, that have ariſen by virtue of either of the ſaid acts.

[This act paſſed *November* 21, 1787.]

An Act ascertaining the Rates at which coined Silver and Gold, and English Half-Pence and Farthings, may pass within this Commonwealth.

Preamble.

WHEREAS the rate of gold has been altered by the legislature of several of the United States, and it now passes at an higher rate in most of them, than it does in this State, whereby the circulating currency here has been much diminished, and there is great danger that all the gold now passing will be sent out of the State; and it is also useful to establish the rate of certain silver coins:

Rates at which coined gold, &c. shall be a lawful tender.

I. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That in the payment of all taxes which shall hereafter be received into the treasury of this Commonwealth, and in the payment of all debts, coined gold and silver shall be received, and be a lawful tender at the rates following, *to wit.*

An English or French crown, at *six shillings* and *eight pence*, and all divisions of such crowns in proportion.

A Spanish milled dollar, at *six shillings*, and all divisions of such dollars in proportion.

An English guinea, of the weight of five penny weight and six grains, at *twenty-eight shillings*, and all divisions of such guineas in equal proportion.

A French guinea, of the weight of five penny weight and six grains, at *twenty-seven shillings* and *four pence*.

A coin of Portugal, commonly called a Johannes, of the weight of eighteen penny weight, at *four pounds sixteen shillings*, and all divisions of such Johannes in like proportion.

A moidore, of the weight of six penny weight eighteen grains, at *thirty-six shillings*, and all divisions of moidores in like proportion.

A four pistole piece, called a doubloon, of the weight of sixteen penny weight twelve grains, at *four pounds eight shillings*, and all divisions of the same coin in like proportion.

Three English *farthings* at a *penny*, and English *half pence* in proportion.

II. *And be it further enacted by the authority aforesaid,* That all pieces of coined gold, before herein enumerated, and which shall weigh more or less than is by this act established as their current weight, shall be received in payment for the taxes hereafter to be received into the treasury of this Commonwealth, and in all debts, for a sum proportioned to the value of gold as hereby stated, *to wit*, at *five pounds six shillings* and *eight pence* by the ounce, any law, usage or custom to the contrary notwithstanding.

Two former acts repealed,

III. *And be it enacted by the authority aforesaid,* That so much of an act, entitled, "An act for ascertaining the rates at which coined silver and gold, and English half pence and farthings, may pass within this government," as respects the rate at which coined gold shall pass within this State, and enacts a penalty for passing the same at an higher rate than is in the said act established; and also an

act,

act, entitled, "An act in addition to an act made and paſſed in the twenty-third year of his late Majeſty, *George* the ſecond, entitled, an act for aſcertaining the rates at which coined ſilver and gold, and Engliſh half-pence and farthings, may paſs within this government," be, and the ſame are hereby repealed and made null and void.

[This act paſſed *October* 26, 1784.]

An Act for Eſtabliſhing a Mint for the Coinage of Gold, Silver and Copper.

Preamble.

WHEREAS the United States in Congreſs aſſembled, by their reſolve of the eighth day of Auguſt, *in the preſent year, have regulated the alloy and value of coin; and whereas the want of a ſufficient circulating medium, renders it expedient, that a mint ſhould be erected and a quantity of coin be ſtruck:* Therefore,

Mint to be erected.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That there ſhall be a mint erected within this Commonwealth, for the coining of gold, ſilver and copper; and that all the coin that ſhall be ſtruck therein, ſhall be of the ſame weight, alloy and value, and each piece bear the ſame name, as is by the ſaid reſolve of Congreſs fixed and eſtabliſhed.

Copper coin to be ſtruck.

II. *And be it further enacted by the authority aforeſaid,* That there ſhall be a quantity of copper coin ſtruck, equal to the amount of *ſeventy thouſand dollars*, in pieces of the two different denominations mentioned in the ſaid reſolve, and in convenient proportions; one of which to have the name *Cent* ſtamped in the center thereof, and the other *Half-Cent*, with ſuch inſcriptions or devices as the Governour with the advice of Council, may think proper; and the ſaid coin, when ſtruck, ſhall be received in all payments in this Commonwealth.

Governour and Council to appoint a perſon to procure neceſſaries, &c.

III. *And be it further enacted,* That the Governour with the advice of Council, be, and he is hereby authorized and empowered, to appoint ſome ſuitable perſon or perſons, to procure all the neceſſaries requiſite to the compleating of the ſaid mint, fit for coining, and to take due care that the ſame be compleated as ſoon as may be, and alſo to procure an able Aſſay-Maſter, ſtock, workmen, and whatever may be neceſſary for the actual coinage of gold, ſilver and copper as before directed; and the Governour with advice of Council, is hereby further empowered to appoint ſome ſuitable perſon or perſons to have the over-ſight and inſpection of the ſaid mint when compleated, and to ſee to the coinage of the copper aforementioned, and of the gold and ſilver that may be bought in for ſtock or brought in for coining—And the Governour with the advice of Council, is hereby further empowered to eſtabliſh proper rules and regulations, reſpecting the well ordering and managing the buſineſs of the ſaid mint, for the ſafe keeping the ſtock and coin that may be

be kept therein, and for ſecuring the fidelity of all employed in the ſaid buſineſs. And the Inſpector or Inſpectors appointed as aforeſaid, ſhall, before he or they enter on the buſineſs of ſaid appointment, give bonds for the faithful diſcharge of the duties of the appointment, with ſureties, to the Treaſurer of this Commonwealth, in ſuch ſum or ſums as the Governour with the advice of Council ſhall direct. Inſpectors to give bonds.

IV. *And be it further enacted*, That all the gold, ſilver and copper belonging to the Commonwealth, that may from time to time be coined in the ſaid mint, ſo often as the ſame ſhall amount to the value of *one thouſand dollars*, ſhall be delivered by the ſaid Inſpector or Inſpectors, into the treaſury of this Commonwealth, he or they taking duplicate receipts therefor, one of which ſhall be lodged in the Secretary's office. Coin to be delivered into the treaſury.

V. *And be it further enacted*, That the charge of erecting and compleating the ſaid mint, of ſtock, workmen, officers, and other diſburſements for carrying on the ſaid buſineſs of coining, ſhall be defrayed out of the ſaid coin, by warrant from the Governour, with advice of Council; the accounts relating to the ſaid mint, and the buſineſs thereof, having been firſt atteſted by the Inſpector or Inſpectors, and laid before the Council, examined and approved. And if there ſhould remain any ſum or ſums of money ariſing from the ſaid coinage, more than is neceſſary for the payment of the aforeſaid expences, the ſame ſhall be appropriated to the purpoſe of ſtock for the ſaid mint, unleſs the General Court ſhall otherwiſe order. Charges to be defrayed out of ſaid coin. Remainder, how appropriated.

VI. *And be further enacted*, That the Inſpector or Inſpectors of the ſaid mint, ſhall from time to time lay before the Governour and Council an account of their doings, and ſtate of the ſaid mint, that the ſame may be laid before the General Court. Inſpectors duty.

[This act paſſed *October* 17, 1786.]

An act for Repealing a Law of this Commonwealth, entitled, "An act impoſing Duties on licenſed Vellum, Parchment and Paper," and for impoſing other Duties on certain Papers, Commiſſions, Inſtruments and Proceſſes.

WHEREAS the ſaid act, entitled, "An act impoſing duties on licenſed vellum, parchment and paper," will be inconvenient in its operation: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the act aforeſaid, and every article, matter and thing therein contained, be, and the ſame hereby is repealed and rendered null and void. Former act repealed.

And whereas by means of the late war a conſiderable publick debt hath ariſen, and it is the duty of the Legiſlature, and for the Preamble.

intereſt of their conſtituents, that ways and means the leaſt burthenſome, be provided for the punctual diſcharge of the intereſt, and the gradual leſſening the principal thereof; and whereas conſiderable ſums of money may be collected from certain papers, commiſſions, inſtruments and proceſſes:

II. *Be it therefore enacted by the authority aforeſaid*, That from and after the firſt day of *Auguſt* next, there ſhall be levied, collected, and paid, throughout this Commonwealth, for the ſeveral and reſpective writings, inſtruments and things hereafter mentioned, the ſeveral and reſpective rates, duties, charges and ſums of money herein after expreſſed, *that is to ſay*:

Inſtruments, &c. dutied.

For every deed that ſhall be recorded by any Regiſter of Deeds, in any of the counties of this Commonwealth, *one ſhilling*, to be paid to ſuch Regiſter by the perſon procuring ſuch deed to be recorded.

For every original writ iſſued from the office of a Clerk of Common Pleas, *eight pence*.

For every original writ iſſued by any Juſtice of the Peace, *four pence*.

For every writ of execution iſſued by a Clerk of the Supreme Judicial Court, *eight pence*.

For every writ of execution iſſued by the Clerk of any Court of Common Pleas *eight pence*.

For every writ of execution iſſued by a Juſtice of the peace, *four pence*.

For every confeſſion of a judgment before any Juſtice of the Peace, *four pence*.

For every regiſter of a veſſel, *one ſhilling*.

For every charter party, *three ſhillings*.

For every policy of inſurance, *two ſhillings*.

For each advertiſement reſpecting private concerns, of the length of twelve lines, computing eight words to a line, or any leſs advertiſements, each time the ſame ſhall be inſerted in a newſpaper, *ſix pence*; on each ſuch advertiſement of greater length, and leſs than twenty ſuch lines, *one ſhilling*, for each time inſerted as aforeſaid; and in that proportion for all advertiſements of greater length.

For every bill of lading, *one penny*.

For every commiſſion for the office of Sheriff in either of the counties of *Suffolk*, *Eſſex*, *Middleſex*, *Hampſhire*, *Worceſter* and *Berkſhire*, *twelve pounds*; and in any other county in the Commonwealth, *ſix pounds*.

For the appointment of any perſon to be Clerk of the Supreme Judicial Court, or Clerk of a Court of Common Pleas in either of the counties of *Suffolk*, *Eſſex*, *Middleſex*, *Hampſhire*, *Worceſter* or *Berkſhire*, *twelve pounds*; and for the appointment of any perſon to be Clerk of a Court of Common Pleas in any other county in the Commonwealth, *ſix pounds*.

For each Regiſter of Deeds, on every choice, *twenty ſhillings*.

For every commiſſion for the office of a Juſtice of a Court of Common Pleas, *twenty ſhillings*.

For

For every commiſſion for the office of a Judge of Probate, *twenty ſhillings*.

For every commiſſion for the office of Regiſter of Probate, *twenty ſhillings*.

And no perſon ſhall be qualified to exerciſe either of the offices aforeſaid, or perform any of the duties thereof, until he hath actually paid to a Collector of impoſt and exciſe, the duties impoſed by this act, and obtained a certificate thereof.

For every admiſſion of any perſon to practice as an Attorney in a Court of Common Pleas, *ſix pounds*.

For the admiſſion of any perſon to practice as an Attorney in the Supreme Judicial Court, *nine pounds*.

And no perſon not already admitted to practice as aforeſaid, ſhall do the buſineſs of an Attorney in either of the Courts aforeſaid, until he hath paid to the Clerk of ſuch Court the duty impoſed as aforeſaid.

For the admiſſion of any perſon to the degree of a Barriſter at law, *twelve pounds*; and no perſon not already admitted thereto, ſhall hereafter enjoy the rank and degree of a Barriſter at law, until he hath paid to the Clerk of the Supreme Judicial Court the duty aforeſaid.

Provided always, That nothing in this act ſhall be conſtrued to extend to the preventing any perſon from exerciſing the right he hath of ſupporting his cauſe, or defending himſelf, by himſelf or his Counſel at his election. Proviſo.

III. *And be it further enacted by the authority aforeſaid*, That for all writs iſſued before the ſaid firſt day of *Auguſt*, by any Juſtice of the Peace or the Clerk of any Court of Common Pleas, after ſuch Juſtice or Clerk ſhall have had notice of the paſſing of this act, the ſame duty ſhall be paid as if ſuch writ had been iſſued after the ſaid firſt day of *Auguſt*; and no deed which ſhall be made after the ſaid firſt day of *Auguſt*, ſhall be recorded after the expiration of ſix months from the time of making the ſame, unleſs the perſon requeſting that the ſame may be recorded, ſhall pay to the Regiſter a duty of *ſix ſhillings*. Duty upon writs to take place upon notice of the paſſing this act.

IV. *And be it further enacted*, That the Regiſter of Deeds in the ſeveral counties of this Commonwealth, ſhall at the end of every three months, from the ſaid firſt day of *Auguſt*, render to the Collector of Exciſe for the county whereof he is Regiſter, or to his deputy, an account upon oath of the number of all deeds by him recorded or received for that purpoſe, and ſhall pay to ſuch Collector or deputy the duty ariſing thereon by this act; and every Juſtice of the Peace and Clerk of the Court of Common Pleas in the ſeveral counties, and the Clerks of the Supreme Judicial Court, ſhall in like manner, at the end of every three months, render an account upon oath to the Collector of exciſe of the county wherein they reſpectively live, of all writs by them reſpectively iſſued, upon which a duty is impoſed by this act; and the ſeveral Clerks aforeſaid ſhall alſo render an account to ſuch Collector, of the Attornies admitted at their reſpective Courts: and the ſaid Clerks and Juſtices ſhall pay How often perſons ſhall account with the Collector, and pay the duties impoſed.

pay to ſuch Collector the whole ſum of the duties impoſed by this act on ſuch writs and admiſſions; and every Printer of news-papers within this Commonwealth ſhall, at the end of every ſix months from the ſaid firſt day of *Auguſt* next, render upon oath to the Collector of exciſe for the county to which he belongs, an account of the duties by him, or the company to which he belongs, owing for the advertiſements printed by him or them, and ſhall pay the duties impoſed thereon by this act. And if any Regiſter of Deeds, Juſtice of the Peace, Clerk of any Court of Common Pleas, or of the Supreme Judicial Court, or any Printer of news-papers, ſhall refuſe or neglect to render an account as aforementioned, and pay the duties to the Collector as aforeſaid, ſuch Regiſter, Juſtice, Clerk, or Printer, thus refuſing or neglecting, ſhall forfeit and pay to the uſe of this Commonwealth, the ſum of *one hundred pounds*, to be ſued for and recovered by the Collector of the county to which they reſpectively belong, in any Court proper to try the ſame.

Perſons refuſing to account.

Penalty.

V. *And be it further enacted by the authority aforeſaid*, That for the purpoſe of effectually levying and collecting the duties impoſed by this act on charter-parties, policies of inſurance, and bills of lading, the ſame ſhall be ſigned on the left hand by ſome one of the Naval-Officers of the county where the ſame ſhall be made, who ſhall receive the duties impoſed as aforeſaid, and ſhall render an account upon oath ſo often as he is obliged by law to account for light-money received by him, unto the Treaſurer of this Commonwealth, for the duties impoſed by this act on regiſters of veſſels, charter-parties, policies of inſurance and bills of lading.

Charter parties, policies of inſurance, & bills of lading, ſhall be ſigned by ſome Naval-Officer, who ſhall receive the duties.

VI. *Be it further enacted by the authority aforeſaid*, That every charter-party, policy of inſurance and bill of lading, engroſſed or written after the firſt day of *September* next, in the counties of *Suffolk*, *Eſſex* and *Middleſex*, and in every other part of the Commonwealth after the firſt day of *October* next, the ſame not being ſigned as by this act is required, ſhall be utterly void and of no effect whatever.

Thoſe not ſigned, ſhall be utterly void.

VII. *And be it further enacted by the authority aforeſaid*, That if any perſon or perſons ſhall at any time hereafter counterfeit or forge any mark or ſignature which ſhall be provided or uſed in purſuance of this act, or ſhall counterfeit or reſemble the impreſſion of the ſame, upon vellum, parchment or paper, with an intention to deprive the Commonwealth of any of the duties aforeſaid, or ſhall utter, ſell or diſpoſe of any vellum, parchment or paper, having thereon any ſuch counterfeited or forged marks or ſignatures, knowing the ſaid marks or ſignatures to be forged or counterfeited; or if any perſon ſhall privately or fraudulently uſe any mark or ſignature provided or uſed in purſuance of this act, with an intent thereby to defraud the Commonwealth, every perſon ſo offending, and being thereof convicted before the Supreme Judicial Court, ſhall forfeit and pay a ſum not exceeding *five hundred pounds*, be ſubjected to be confined to hard labour for a term not exceeding ſeven years, be whipped not exceeding thirty-nine ſtripes, or ſuffer either or all of the ſaid puniſhments, according to the nature and aggravation of the offence.

Perſons counterfeiting, forging, or fraudulently uſing, any mark or ſignature provided or uſed in purſuance of this act.

Penalty.

VIII.

VIII. *And be it further enacted,* That the ſeveral and reſpective Collectors of impoſt and exciſe in this Commonwealth, ſhall keep a regular and ſeparate account of all monies ariſing by this act, and ſhall render the ſame, and pay the monies which they may receive by virtue of this act, into the treaſury of this Commonwealth, at the times by law required for payment of the monies ariſing by impoſt and exciſe; and the ſaid Collectors ſhall receive the ſame commiſſions for the collection of the duties hereby impoſed, as are provided for the collection of the duties ariſing from impoſt and exciſe.

Collectors of Impoſt and Exciſe ſhall keep a regular and ſeparate account of all monies ariſing by this act.

[This act paſſed *July* 2, 1785.]

An Act in Addition to, and for repealing certain Parts of an Act, paſſed *July* the Second, one Thouſand ſeven Hundred and Eighty-five, entitled, "An Act, for repealing a Law of this Commonwealth, entitled, An Act, impoſing Duties on licenced Vellum, Parchment and Paper, and for impoſing other Duties on certain Papers, Commiſſions, Inſtruments and Proceſſes."

WHEREAS by ſaid act, certain duties are laid on policies of inſurance, charter parties and bills of lading, but no ſufficient proviſion is made for enforcing the payment of the ſame: Therefore,

Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That every charter-party, policy of inſurance and bill of lading, which is now or may hereafter be written or engroſſed within this Commonwealth, which ſhall not be ſigned, as by ſaid act is required, by the firſt day of *September* next, or within two months from the date of any ſuch charter-party, policy of inſurance or bill of lading, ſhall be utterly void and of no effect whatever.

And whereas by ſaid act, certain duties are impoſed on every confeſſion of a judgment, before any Juſtice of the Peace, and writs of execution thereon, which duties may operate as a diſcouragement to the making of ſuch confeſſion of judgment:

II. *Therefore be it enacted by the authority aforeſaid,* That the clauſe of the ſaid act, impoſing duties on any confeſſion of judgment before any Juſtice of the Peace, and writ of execution thereon, be, and it is hereby repealed.

Clauſe of a former act repealed.

[This act paſſed *July* 7, 1786.]

An Act in Addition to an Act paſſed *July* Second, one Thouſand ſeven Hundred and Eighty-five, entitled, "An Act for repealing a Law of this Commonwealth, entitled, "An Act impoſing Duties on licenced Vellum, Parchment and Paper, and for impoſing other Duties on certain Papers, Commiſſions, Inſtruments and Proceſſes."

Preamble.

WHEREAS by the ſaid act certain duties are laid on policies of inſurance, charter-parties, and bills of lading, but no ſufficient proviſion has hitherto been made for enforcing the payment thereof:

Policies of inſurance, charter-parties, and bills of lading not ſigned by the naval-officer, to be void.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That from and after the firſt day of *May* next, every policy of inſurance, charter-party, and bill of lading, which ſhall not be ſigned by a naval-officer as provided by law, ſhall be utterly void and of no effect whatever. And if any inſurance officer or other perſon ſhall fill any policy, or if any maſter of any veſſel or any perſon in his ſtead, ſhall ſign any bill of lading, which policy, charter-party, or bill of lading ſhall not be previouſly ſigned by ſome one of the naval-officers of this Commonwealth, each and every one thus offending, ſhall forfeit and pay a fine of *ten pounds*, for each offence, to be ſued for and recovered by any citizen of this Commonwealth, in any Court proper to try the ſame; and two thirds of all fines, ſo recovered, ſhall be to the uſe of the proſecutor, the other third to the uſe of this Commonwealth, to be appropriated as hereafter directed.

Penalty.

Monies ariſing by this act to be paid in ſpecie.

II. *Be it further enacted,* That all monies which have ariſen or may ariſe by virtue of this act, or the act to which this is an addition, not already paid into the treaſury, ſhall be paid in ſpecie.

Monies ariſing from the former act and penalties, appropriated.

III. *And be it enacted,* That all monies ariſing from the duties impoſed by the act to which this is an addition, and from all penalties enuring to this Commonwealth, from a breach of the ſame, or from this act, be, and they are hereby appropriated to the payment of the Judges of the Supreme Judicial Court, ſo far as ſhall be neceſſary for that purpoſe.

Duty on advertiſements and 6s. duty on deeds, repealed.

IV. *And be it further enacted by the authority aforeſaid,* That ſo much of the ſaid act, to which this is an addition, which reſpects a duty on advertiſements in news-papers, a duty on writs and executions, and a forfeiture of *ſix ſhillings* for not recording a deed within ſix months from the time of making the ſame, be, and hereby is repealed.

Duties incurred, to be paid in three months.

Provided nevertheleſs, That the duties already incurred ſhall be paid within three months from the paſſing of this act.

[This act paſſed *March* 26, 1788.]

An

An Act for annexing Fees to certain Papers in the Secretary's Office, and for making an Appropriation thereof.

WHEREAS it is found neceſſary that ſome certain proviſion ſhould be made for the pay of the Secretary and the Clerks in his Office: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That ſo much of an act paſſed the firſt day of *March*, one thouſand ſeven hundred and eighty-ſeven, as relates to the fees eſtabliſhed for the Secretary's Office, be, and it is hereby repealed. Part of a former act repealed.

II. *And be it further enacted by the authority aforeſaid,* That in future the following ſhall be the eſtabliſhed fees to be paid into the Secretary's Office. Fees.

For all copies for the benefit of individuals, at the rate of *one ſhilling* for each hundred words.

For copies of reſolves and orders of the General Court or of the Governour and Council, of a private or local nature, *three ſhillings.*

For an act for the benefit of individuals, companies or corporate bodies (except ſocieties for the promotion of arts and ſciences, agriculture and manufactures, religion and charitable purpoſes) *twelve ſhillings.*

For every act for the incorporation of a town, diſtrict, precinct or pariſh, excepting the incorporation of plantations, to be paid by the agent applying therefor, *ſix ſhillings.*

For every commiſſion of ſewers, *ſix ſhillings.*

For every regiſter of a veſſel, *ſix ſhillings.*

For every warrant for a branch pilot, *ſix ſhillings.*

For every impreſſion of the ſeal of the State, with a certificate on private papers, *twelve ſhillings.*

For every paſs or letter of recommendation for perſons or veſſels bound to foreign parts, *twelve ſhillings.*

For every notification of the Secretary for an appointment of inſpectors, aſſay-maſters or ſurveyors of tobacco, flax-ſeed, pot-aſh, pearl-aſh, loaf-ſugar, beef, pork, fiſh and butter, *ſix ſhillings.*

For every notification of the Secretary of an appointment to the office of Comptroller-General, *thirty ſhillings.*

For every notification of the Secretary of an appointment to the office of Collector of Impoſt and Exciſe, *twenty ſhillings.*

For every notification of the Secretary of an appointment of Naval-Officer, *twelve ſhillings.*

Provided that the perſons notified as aboveſaid, ſhall accept their reſpective truſts.

For every commiſſion to the office of Coroner, *ſix ſhillings.*

For every commiſſion to the office of Juſtice of the Peace, of the quorum, and through the Commonwealth, *nine ſhillings.*

For every commiſſion of a letter of marque and repriſal, *twenty-four ſhillings.*

For

For every act of naturalization of a foreigner, otherwiſe than a huſbandman, mechanick or common labourer, *ſix pounds*.

Secretary to keep an account of fees, and pay the ſame into the treaſury, &c.

III. *And be it further enacted by the authority aforeſaid*, That the Secretary ſhall receive, and keep an account of all the fees by him taken in virtue of this act, and ſhall pay the ſame quarterly into the treaſury of this Commonwealth; and the ſaid Secretary's proportion of a quarterly payment of the ſalary allowed him, and alſo the proportion that may be due to the ſeveral Clerks in the ſaid Secretary's Office, ſhall be paid out of the ſame, in diſcharge of the warrants reſpectively drawn in their favour: And a fair account of the whole fees received, with the names of the perſons paying the ſame, ſhall be annually laid before the General Court.

To lay an account before the General Court.

[This act paſſed *March* 31, 1788.]

An Act Eſtabliſhing and Regulating the Fees of the ſeveral Officers and other Perſons hereafter mentioned, and for repealing the Laws heretofore made for that Purpoſe.

BE *it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That from and after the firſt day of *Auguſt*, one thouſand ſeven hundred and eighty-ſeven, the fees of the ſeveral officers and other perſons hereafter mentioned, ſhall be as follows, *viz.*

Juſtices Fees.

Juſtices Fees.

For every blank writ of attachment and ſummons thereon, or original ſummons, *one ſhilling*. The declaration in a writ triable before a Juſtice, *one ſhilling* and *eight pence*. *Subpæna* for one or more witneſſes, *four pence*. Entry of an action or filing a complaint, in civil cauſes, *one ſhilling*. Filing papers, *one penny* each paper. Writ of execution, *one ſhilling* and *four pence*. Examining, allowing and taxing a bill of coſt, *three pence*. Entering up judgment in civil or criminal cauſes, and recording the ſame, *one ſhilling* and *four pence*. Copy of every evidence, original paper, or record, if under a page, *ſix pence*, if one page or upwards, at the rate of *eight pence* per page. A recognizance or bond of appeal, including principal and ſurety, *one ſhilling*. Taking affidavits out of Court, in order for the trial of any cauſe, *one ſhilling*, and for the Juſtices travel every ten miles, *two ſhillings* and *ſix pence*, the ſame for returning, and ſo in proportion; the travel to be certified by the Juſtice to the Court, before whom the cauſe is to be tried, and for writing depoſition, caption and notification, at the rate of *eight pence* a page. Taking affidavits in *perpetuam rei memoriam*, to each Juſtice, *one ſhilling*, and writing the ſame and travel as aforementioned. Adminiſtering

miniſtering an oath, to perſons appointed to appraiſe eſtates, or to appraiſe and divide real eſtates, together with certificates of the ſame, *one ſhilling*. Adminiſtering an oath to one or more witneſſes, at the ſame time, before referees or arbitrators, *one ſhilling*, for travel for that purpoſe, the ſame as in taking affidavits. Taking the acknowledgement of a deed, with one or more ſeals, provided it be at one and the ſame time, and certifying the ſame, *eight pence*. Receiving a complaint, and iſſuing a warrant in criminal caſes, *two ſhillings*. Granting a warrant, ſwearing appraiſers relating to ſtrays, and entering the ſame, *one ſhilling* and *ſix pence*. Adminiſtering oaths in all other caſes, with certificates, except oaths to town, diſtrict or pariſh officers, *one ſhilling*. Trial of an iſſue, *two ſhillings*.

Coroners Fees.

For ſerving a writ, ſummons or execution, and for travel in returning the ſame, or for returning an inquiſition, the ſame allowance as is by this act allowed to Sheriffs. Coroners fees.

Bail bond, *one ſhilling*.

Every trial where the Sheriff is concerned, *one ſhilling*.

Attending the Jury, *one ſhilling*.

Granting a warrant and taking inquiſition on a dead body, *four ſhillings* ; if more than one at the ſame time, and who came to their death by the ſame means, *one ſhilling* for every other after the firſt.

Travel and expence for taking an inquiſition, *four ſhillings*, per day.

The foreman of the Jury at the rate of *three ſhillings* and *ſix pence*, per day, for time and expences, and to every other Juror, at the rate of *three ſhillings* per day, excluſive of travel, for which, if above four miles, he ſhall have *two pence* per mile, out and home.

The Conſtable for his attendance and expences, in ſummoning a Jury, *four ſhillings* a day ; and all the aforeſaid charges of the inquiſition ſhall be paid out of the county treaſury, except ſuch as are taken upon bodies of ſtrangers, not belonging to this Commonwealth, and in ſuch caſe the expence ſhall be paid out of the treaſury of this Commonwealth ; ſuch account of expences, being firſt examined and allowed by the Court of General Seſſions of the Peace, in the county in which ſuch inquiſitions ſhall be taken.

Judge of Probate's Fees.

For granting adminiſtration, *three ſhillings*.

Appointing or allowing guardians to minors, *two ſhillings* ; and if more than one minor to the ſame guardian, *three pence* each, for all above the firſt. Judge of Probate's fees.

A decree reſpecting the probate of a will or codicil, *three ſhillings*.

Examining and allowing an inventory, and ſwearing the executor or executors, adminiſtrator or adminiſtrators, *one ſhilling*

Swearing the appraiſers, *nine pence*.

Examining and allowing accounts, *two ſhillings*.

A decree for ſettling inteſtate eſtates, *two ſhillings*.

A citation, *nine pence*. Summons

Summons for witneſſes, *four pence.*

A *quietus*, *one ſhilling.*

A warrant to appraiſe or divide eſtates, *one ſhilling* and *ſix pence.*

Iſſuing commiſſions to receive and examine creditors claims, when eſtates are repreſented inſolvent, *one ſhilling.*

An order of diſtribution, *one ſhilling.*

Granting an appeal to the Supreme Court, *one ſhilling.*

Regiſter of Probate's Fees.

For writing bond, and letter of adminiſtration, *two ſhillings.*

Regiſter of Probate's fees.

Writing bond and letter of guardianſhip and making record thereof, *three ſhillings*, for one minor, and if for more than one minor to the ſame guardian, then *two pence* each, for every additional one after the firſt.

Drawing a decree reſpecting the probate of a will or codicil, *two ſhillings.*

Writing bond for the executor, *one ſhilling.*

Writing a warrant to appraiſe the eſtates of perſons deceaſed, *one ſhilling.*

A warrant to divide an inteſtate eſtate among the heirs, *one ſhilling.*

Writing a warrant to ſet off a widow's dower only, or a warrant to examine the claims on an inſolvent eſtate, *one ſhilling.*

For entering on an inventory the oath of the executor or adminiſtrator, *eight pence.*

Entering on the account of an executor or adminiſtrator or guardian, an allowance thereof, *eight pence.*

Drawing up a decree on the ſettlement or partition of eſtates, *one ſhilling.*

Drawing an order of diſtribution, *one ſhilling.*

A *quietus*, *one ſhilling.*

A citation, *nine pence.*

A ſummons for a witneſs or witneſſes, *four pence.*

Proportioning an inſolvent eſtate among the creditors, at the rate of *three ſhillings* for every twelve creditors, every creditor's proportion being ſeverally diſtinguiſhed.

Recording a will, inventory, account or other matters, for every page, *eight pence.*

Copy of a will, inventory, or other paper, for each page, *eight pence.*

Bond of appeal, *one ſhilling.*

II. *And be it further enacted*, That whenever any fees ſhall be paid into the probate office, a particular account of ſuch fees, and for what they accrued, ſhall before payment (if demanded) be by the Judge or Regiſter, ſet down in writing and given to the party paying the ſame; and any fees received without being thus aſcertained in writing (when demanded as aforeſaid) ſhall be deemed illegal fees; and the perſon or perſons receiving the ſame, ſhall forfeit and ſuffer treble the ſum by him ſo received, and be liable to an action of debt to be brought by him who ſhall ſo pay the ſame, in any Court proper to try the ſame. *In*

In the Court of Common Pleas.

Juſtices Fees.

Juſtices fees in the Court of Common Pleas.

For the entry of every action, *two ſhillings* and *eight pence.*

And for every action where an iſſue in law or fact is joined, *four ſhillings*, in addition to the fee for entry.

Taxing a bill of coſt, *ſix pence.*

Granting an appeal and taking a recognizance of the principal and ſurety or ſureties, *one ſhilling.*

Proving a deed, *one ſhilling.*

Surrender of the principal in Court by his ſurety or ſureties, *eight pence.*

Granting a writ of protection, *one ſhilling.*

Entering a petition and making an order thereon, for the ſale of real eſtates, *three ſhillings.*

Clerk of the Common Pleas.

Clerk of the Common Pleas.

Every action entered, *one ſhilling.*

Entering and recording a verdict or report of referees, *ſix pence.*

Every action withdrawn, or nonſuit, *four pence.*

Confeſſing judgment, or default, or joinder, or demurrer, *ſix pence.*

Entering up judgment and recording the ſame at large, *one ſhilling.*

Acknowledging ſatisfaction of a judgment on record, *four pence.*

Entering an appeal and recognizing principal and ſureties, *eight pence.*

Examining and caſting each bill of coſt, *ſix pence.*

Filing each paper, *one penny.*

Continuing each cauſe to the next term, *ſix pence.*

Entering the ſurrender of a principal in Court, and making a record thereof, *eight pence.*

Entering a rule of Court upon the parties ſubmitting a cauſe to referees, *ſix pence.*

Every blank writ and ſummons, *ſix pence.*

A blank *ſcire facias*, *ſix pence.*

A blank original ſummons, *ſix pence.*

An original, or *alias* execution in perſonal matters, and filing the ſame when returned, *one ſhilling.*

Every writ of poſſeſſion in real actions, *two ſhillings.*

A writ of protection or *habeas corpus ad teſtificandum*, *one ſhilling.*

Each *venire facias* for jurymen, to be paid out of the county treaſury, *two pence.*

In the Court of General Seſſions of the Peace.

In the Court of General Seſſions.

To each Juſtice for every day's conſtant attendance in Court, *four ſhillings*; and no Juſtice ſhall be allowed pay for more than two days

days attendance at any one term; travel for ſuch Juſtices as are ten miles and upwards diſtant from the Court-Houſe, or place where the Court ſits, *four ſhillings* for every twenty miles, computing out and home; the travel and attendance to be paid out of the county treaſury, except ſuch Juſtices as are ſworn Attornies at law, or Clerks of the ſeveral Courts of Seſſions, who ſhall not be allowed for travel or attendance. The Clerk to keep an account of their attendance as aforeſaid; and all fines and forfeitures aſſeſſed by the ſame Court, and not otherwiſe appropriated by law, to be paid into the county treaſury, for the uſe of the county.

Clerks of the Seſſions Fees.

Clerks of the Seſſions fees

Entering an indictment, complaint, preſentment or information, *one ſhilling*.

Recording the judgment of the Court thereon, *eight pence*.

Diſcharging a recognizance, *ſix pence*.

Each warrant for criminals, *one ſhilling*.

Each ſummons or *ſubpœna* for witneſs or witneſſes, *four pence*.

Each recognizance for innholders or retailers, including principal and ſureties, and for tranſmitting the name of the licenſed perſon to the ſelectmen, and recording the licenſe, *eight pence*.

A warrant for county tax, *one ſhilling*.

Warrant to lay out or alter a road, *one ſhilling*.

Examining and caſting the Grand Jurors account, yearly, and order thereon, *one ſhilling* and *ſix pence*.

Examining any other account, *four pence* each.

Recording the reports of highways and other matters, by order of Seſſions, *eight pence* a page.

Copies of all records or original papers, *eight pence* a page.

Filing each paper, *one penny*.

Entering an appeal and recognizing the principal and ſureties, *eight pence*.

In the Supreme Judicial Court.

Juſtices Fees.

In the Supreme Judicial Court.

Juſtices fees.

Entering an action or complaint, *five ſhillings* and *four pence*.

Taking ſpecial bail, *two ſhillings*.

Allowing a writ of error, or granting *certiorari*, *habeas corpus*, or other writ on motion, *two ſhillings*.

Granting a writ of protection, *one ſhilling* and *ſix pence*.

Proving a deed, *one ſhilling*.

Entering a petition and making order thereon, for the ſale or partition of real eſtates, *ſix ſhillings*.

Accepting partition of real eſtates, *two ſhillings*.

Taxing a bill of coſt, *one ſhilling*.

The foregoing fees to be paid to the Clerk of the ſaid Court, who ſhall ſome time in the month of *December*, annually, certify to the Governour and Council, the ſums by him ſo taken and received, and

and paid over to the ſaid Juſtices, that the ſame may be deducted from the laſt quarter of the ſaid Juſtices yearly ſalary; and the Governour and Council are hereby empowered to deduct the ſame accordingly.

Clerk's Fees in the Supreme Judicial Court.

Clerks fees in the Supreme Judicial Court.

Entering each action for trial, *three ſhillings.*
Entering each complaint, *one ſhilling* and *ſix pence.*
Receiving and recording a verdict, *one ſhilling.*
A writ of review, *three ſhillings.*
A writ of *ſcire facias, two ſhillings.*
A writ of execution, *one ſhilling* and *ſix pence.*
A writ of *facias habere poſſeſſionem, two ſhillings* and *ſix pence.*
A writ of *habeas corpus, two ſhillings.*
Copies of all records, each page, *eight pence*; leſs than a page, *ſix pence.*
Entering a rule of Court, *nine pence.*
Confeſſing judgment or default, *one ſhilling.*
Every action withdrawn, or nonſuit, *one ſhilling.*
Entering an appearance, *ſix pence.*
Acknowledging ſatisfaction of a judgment and record, *eight pence.*
Examining each bill of coſt, *eight pence.*
Continuing each cauſe and entering the ſame next term, *one ſhilling.*
Filing each paper in each cauſe, *one penny.*
Proving a deed in Court, and certifying the ſame, *one ſhilling.*
Entering up judgment and recording the ſame at large, *two ſhillings.*
Each *venire*, to be paid out of the county treaſuries reſpectively, on the Juſtices certificate, *three pence.*
Every writ and ſeal other than beforementioned, *two ſhillings.*
Every *ſubpæna* for one or more witneſſes, *ſix pence.*
Each recognizance, including principal and ſureties, *one ſhilling.*
A writ of protection, *one ſhilling.*
Entering a diſcharge of a recognizance, by proclamation, *nine pence.*

Attornies Fees, and allowance to Parties and Witneſſes.

Attornies fees, &c.

To parties recovering coſt, for an Attorney, or Counſellor's fee, when counſel is employed, where an iſſue in law or fact is joined in the Supreme Court, *twelve ſhillings.* And for all other cauſes in ſaid Court, and all cauſes in the Court of Common Pleas, and Court of General Seſſions of the Peace, where an iſſue in law or fact, is joined, *ſix ſhillings.* And for all other cauſes in ſaid Court, *ſix ſhillings.*

For parties recovering coſts, whether in the Supreme Judicial Court, Court of Common Pleas, General Seſſions of the Peace, or before a Juſtice, *one ſhilling* and *ſix pence*, for each day's attendance and travel; ten miles to be accounted as one day; no allowance to

be made for travel to or from the Clerk's office, in order to make out a writ or ſummons, or carry the ſame to an officer: And no plaintiff ſhall be allowed more than two days attendance, when the defendant is defaulted, unleſs the defendant appears in Court and makes anſwer to the plaintiff's ſuit, in which caſe, if the defendant is afterwards defaulted, no attendance ſhall be taxed for the plaintiff, after the day when ſuch default happens.

In criminal cauſes, where one or more defendants are tried by the Jury, at the ſame time, in the Supreme Court, or where the cauſe is determined by an iſſue in law, *twelve ſhillings*; and if no trial by Jury, and the cauſe is not determined by an iſſue in law, *ſix ſhillings*; and in the Court of General Seſſions of the Peace, the ſame allowance for counſel, as in the Common Pleas.

Drawing an indictment in the Seſſions, *three ſhillings*.

Drawing an indictment in the Supreme Judicial Court, *ſix ſhillings*.

Witneſſes in civil or criminal cauſes, whether in the Supreme Judicial Court, Court of Common Pleas, Court of General Seſſions of the Peace, *three ſhillings* a day, and *two pence* for each mile's travel going out and returning home; and before a Juſtice of the Peace, *two ſhillings* per day; and the travel, the ſame as at other Courts; provided the ſaid witneſſes do perſonally attend either of the ſaid Courts, and give in, in writing, to the Clerk of ſaid Court, his time and travel.

Sheriffs and Conſtables Fees.

Sheriffs and conſtables fees.

For the ſervice of an original ſummons or *ſcire facias*, on one defendant for trial, either by reading the ſame, or by copy, *one ſhilling* and *four pence*, if ſerved on more than one defendant, then for each other defendant ſo ſerved, *one ſhilling* and *four pence*.

For ſervice of a capias or attachment on one defendant, with or without ſummons, *one ſhilling* and *four pence*; if ſerved in like manner on more than one defendant, then for each other ſo ſerved, *one ſhilling* and *four pence*; and where the officer is by law directed to leave a copy, in order to complete the ſervice, he may charge at the rate of *eight pence* a page. For a bail bond and writing the ſame, including principal and ſureties (to be paid by the perſon admitted to bail) *one ſhilling*.

Serving a writ of poſſeſſion, excluſive of the poundage, on the coſt of Court, *five ſhillings*, if on more than one piece of land, *three ſhillings* each.

The fees for collecting the coſt on a writ of poſſeſſion, the ſame poundage as in perſonal actions.

Serving a warrant, *one ſhilling* and *four pence*. Sheriff's aid in criminal caſes to each perſon, *four ſhillings*, including expenſes, for every twelve hours; and ſo in proportion for a leſs time, and *two pence* for each mile's travel going out and returning home.

Summoning witneſſes in criminal caſes, *ſix pence* for each witneſs, and travel as in civil cauſes, unleſs in ſpecial caſes, when the Court may increaſe the fee to what they ſhall judge reaſonable.

Levying

Levying executions in perſonal actions, *viz.* for the firſt *twenty pounds* or under, *eight pence a pound*; above that, not exceeding *forty pounds*, *four pence a pound*, above that, not exceeding *one hundred pounds*, *two pence a pound*, for all above *one hundred pounds*, *one penny a pound*.

Provided nevertheleſs, That the Sheriff or other officer who may ſerve any execution, iſſued by the Treaſurer of this Commonwealth, or by any county or town Treaſurer, againſt any Conſtable or Collector of public, county or town taxes, ſhall not be entitled to demand or receive more than half the poundage, and half the travel which is allowed in other caſes.

Travel for the ſervice of each execution or mean proceſs, or warrant to him directed, *two pence* a mile, the travel to be computed from the place of ſervice to the Court where the writ or execution ſhall be returned, by the way that is moſt commonly uſed; but one travel to be allowed to one writ or execution, and if the ſame be ſerved on more perſons than one, the travel to be computed from that place of ſervice, that is moſt remote from the place of return, with all further neceſſary travel in ſerving ſuch writ or execution; the travelling fee, and fees of ſervice, to be endorſed by the Sheriff or his Deputy, on each mean proceſs, or execution, otherwiſe not to be allowed.

Serving an execution upon judgment of Court, for partition of real eſtate, or for aſſigning dower, *five ſhillings* a day, and *two pence* a mile out, from the place of his abode.

Every trial *ſix pence*.

Every default, *three pence*.

Returning the certificate of votes, of the ſeveral towns, for a Governour, &c. to the Secretary's office, *four pence* per mile, computing from his abode, to the Secretary's office; to be paid out of the county treaſury, and but one travel to be allowed for the whole.

To the officer attending the Grand Jury, each day, *two ſhillings* and *ſix pence*.

To the officer attending the Jury for trial, *one ſhilling*, for every cauſe, to be paid with the Jury's fees.

For diſperſing *venires* for Jurymen, from the Clerk of the Supreme Judicial Court, Treaſurer's warrants, and proclamations of all kinds, *three pence* each.

To each appraiſer of real eſtates, for extending executions, or aſſigning dower, *four ſhillings* a day, and ſo for a longer or ſhorter time.

Every Conſtable who ſhall attend the Supreme Judicial Court, or Court of General Seſſions of the Peace, or Common Pleas, by their order, *three ſhillings* a day, to be paid out of the country treaſury. And for encouragement unto the Sheriff to take and uſe all poſſible care and diligence, for the ſafe keeping of the priſoners, that ſhall be committed to his cuſtody, he ſhall have ſuch ſalary allowed him for the ſame, as the Juſtices of the Court of General Seſſions of the Peace, within the ſame county, ſhall think fit to order, not exceeding *ten pounds* a year for the county of *Suffolk*; and not exceeding *five pounds* each, for the other counties within the government, at the diſcretion of the Court of Seſſions, to be paid out of the treaſury of ſuch county.

III.

III. *And be it further enacted by the authority aforesaid,* That any Conſtable in any town in this Commonwealth, be, and he is hereby fully authorized and empowered, to ſerve upon any perſon or perſons in the town to which he belongs, any original writ, ſummons or writ of execution, in any perſonal action, where the damage ſued for or recovered, does not exceed *twenty pounds*, and return thereof to make to any Court proper to try the ſame.

Criers Fees.

Criers fees.

Calling a Jury, *four pence*, to be paid with the Jury fees.

A default or non-ſuit, a judgment aſſigned or complaint, a verdict or demurrer, *eight pence* each.

Diſcharging a recognizance by proclamation, *four pence*. Said fees to be paid to the Clerks of the reſpective Courts for the uſe of the Crier.

Goalers Fees.

Goalers fees.

For turning the key on each priſoner committed, *two ſhillings*, *viz. one ſhilling* in, and *one ſhilling* out.

Dieting each perſon, ſuch ſum weekly as the Court of Seſſions ſhall judge reaſonable.

Grand Jurors Fees.

Grand Jurors fees.

Foreman, *four ſhillings*, per day.

Each other Juror, *three ſhillings* and *ſix pence*, per day, and *two pence* per mile for each mile he ſhall travel going out and returning home, and but one travel at each term.

Jurors for Trial, their Fees.

Jurors for trial, their fees,

To the Foreman in every cauſe, at the Supreme Judicial Court, the Court of Common Pleas, and Court of General Seſſions of the Peace, *three ſhillings* and *ſix pence*.

To every other Juror, *three ſhillings*, their allowance for travel to be the ſame as the Grand Jury's, and to be paid out of the county treaſury.

For Marriages, &c.

For marriages, &c.

To the Town-Clerk for publiſhing the banns of matrimony, and making a record thereof, *one ſhilling*, and recording the marriage when the certificate is returned by the Miniſter, or Juſtice officiating, *ſix pence*, and to the Clerk of the Seſſions, to be paid by the reſpective Town-Clerks, *two pence*.

Every certificate of a publiſhment, *ſix pence*.

Recording births and deaths, *two pence*.

For each marriage, to the Miniſter or Juſtice officiating, and for certifying the ſame to the Town-Clerk, *ſix ſhillings*.

To the Town-Clerk for a certificate of the births or deaths of every perſon, *four pence*.

The

[*The fees in the Secretary's Office, as originally eſtabliſhed by this act, being repealed, are here omitted.---See preceding act.*]

To the Captain of Caſtle-William.

For a paſs by the Caſtle for each veſſel, *one ſhilling* and *ſix pence*, except for wood ſloops and other coaſting veſſels, for which paſſes have not been uſually taken out. To the Captain of Caſtle-William.

Meſſenger of the General Court.

Serving every warrant which the General Court or either Houſe may grant, for arreſting, impriſoning, or taking into cuſtody any perſon, *two ſhillings*. Meſſengers of the General Court.

For travel each mile out, and the ſame returning, *three pence*.

For keeping and providing food for ſuch perſon, *two ſhillings* a day.

For his diſcharge or diſmiſſion, *two ſhillings*.

County Regiſters Fees.

For entering and recording a deed of partition or other paper, of the length of one page or under, *nine pence*; and for certifying on the original, the time when, the book and page where, the ſame is recorded, *three pence*; if the inſtrument recorded exceed a page, *eight pence* a page, for as many pages as it contains, the fees to be paid at the offering the inſtrument. County Regiſters fees.

For all copies, at the rate of *eight pence* a page.

For entering in the margin, the diſcharge of a mortgage, to be ſigned by the perſon diſcharging the ſame, *eight pence*.

IV. *And be it further enacted*, That the Clerks of the ſeveral Courts, and other perſons keeping public offices, ſhall conſtantly have a liſt of the fees by this act preſcribed, ſo far as it relates to them reſpectively, printed or wrote out in legible characters, and hung in ſome convenient place in their reſpective offices; and any perſon that ſhall demand any greater fee or fees for any of the ſervices aforeſaid, than are by this law provided, he or they ſhall forfeit and pay for every offence, the ſum of *ten pounds*, with coſts of ſuit, to him or them that will proſecute and ſue therefor, by action of debt, within one year after the offence committed, in the Court of Common Pleas. Penalty for demanding a greater fee than is by law provided.

V. *And be it further enacted by the authority aforeſaid*, That any perſon who ſhall willfully and corruptly demand and receive, any greater fee or fees for any of the ſervices aforeſaid, than are by this law provided, and ſhall be convicted thereof, upon an indictment of the Grand Jury in the Court of General Seſſions of the Peace, or at the Supreme Judicial Court, may, over and above the fine of *ten pounds*, be adjudged incapable of ſuſtaining any office within the Commonwealth, for a term of time not exceeding ſeven years from the time of ſuch conviction: *Provided* the information or indictment be filed within one year next after the offence was committed, Upon conviction thereof, ſuch perſons ſhall be adjudged incapable of ſuſtaining any office, &c. Proviſo.

Acts heretofore made, declared null and void,

VI. *And be it further enacted,* That from and after the first day of *Auguſt*, one thouſand ſeven hundred and eighty-ſeven, all acts and laws heretofore made for regulating and eſtabliſhing the fees herein mentioned, ſhall ceaſe to operate, and become null and void.

[This act paſſed *March* 1, 1787.]

An Act for the Eſtabliſhment of a National Bank; and for preventing the Eſtabliſhment of every other Bank, and to prevent the paſſing of forged Bank Bills.

Preamble.

WHEREAS a national bank is of great ſervice as well to the publick as to individuals; and the United States in Congreſs aſſembled, have by their reſolution of May *the twenty-ſixth, one thouſand ſeven hundred and eighty-one, approved of the plan ſubmitted to them for the eſtabliſhment of a national bank within the ſaid United States:*

Subſcribers to the national bank incorporated.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſubſcribers to the national bank approved of by the United States as aforeſaid, be, and they hereby are incorporated on the behalf of this Commonwealth, by the name of the Preſident, Directors, and Company of the Bank of *North-America*, according to the terms of the ordinance to incorporate the ſaid ſubſcribers, paſſed by the United States in Congreſs aſſembled, on the thirty-firſt day of *December*, in the year of our Lord one thouſand ſeven hundred and eighty-one.

No other bank to be erected within this commonwealth.

II. *And be it further enacted by the authority aforeſaid,* That during the continuance of the preſent war with the crown of *Great-Britain*, no other bank, nor any other corporation, company, or conſtitution, in the nature of a bank, ſhall be erected, or eſtabliſhed, permitted, ſuffered, or allowed, within this Commonwealth. *Provided nevertheleſs,* That if either of the United States ſhall, during the ſaid war, eſtabliſh or permit any other bank, ſociety or conſtitution, in the nature of a bank, to be eſtabliſhed within the ſame, then this clauſe ſhall be void and of no effect.

Proviſo:

Notes and bills iſſued in the name of the preſident, &c. received in all payments.

III. *And be it further enacted by the authority aforeſaid,* That all notes and bills which have been or ſhall be iſſued by, for, or in the name of the ſaid preſident, directors, and company, and payable on demand, ſhall be receivable in the payment of all taxes, debts and duties, due, or that may become due, or payable to or for account of the ſaid United States.

Perſons guilty of forgery, &c.

IV. *And be it further enacted by the authority aforeſaid,* That if any perſon ſhall forge, alter or counterfeit any ſealed bank bill, or obligation, made or given out for, or in the name of the ſaid preſident, directors and company, for the payment of any ſum of money; or any bank note of any ſort whatſoever, ſigned for or in the name of the ſaid preſident, directors and company, or ſhall alter or eraſe the ſame, or any indorſement thereon, or ſhall tender in payment, utter,

utter, exchange, or barter any ſuch altered, forged, or counterfeited bill, obligation, or note, or any eraſed or altered bill, obligation or note, or the indorſement thereupon, or ſhall demand the money therein, pretended to be due, or any part thereof, of the ſaid preſident, directors and company, or their ſucceſſors, or any other perſon or perſons, knowing ſuch bill, obligation, or note to be altered, forged, counterfeited, or eraſed, and with intention to defraud the ſaid preſident, directors, and company, or any other perſon or perſons; every perſon ſo offending, and being thereof convicted in due form of law, ſhall be deemed guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy. To ſuffer death.

V. *And be it further enacted by the authority aforeſaid*, That if any perſon or perſons ſhall forge, or counterfeit, or procure to be forged, or counterfeited, or knowingly and wilfully act or aſſiſt in forging or counterfeiting any letter of attorney, or inſtrument, to transfer or convey any ſhare or ſhares of ſtock, or any part thereof, of and in the bank aforeſaid, or to receive the ſame, or any dividend or dividends ariſing from the ſame; or ſhall knowingly and fraudulently demand to have any ſuch ſhare or ſhares, dividend or dividends, or any part thereof, transferred, conveyed or received, by virtue of ſuch counterfeit or forged letter of attorney or inſtrument; or ſhall falſely and deceitfully perſonate any true and lawful proprietor or proprietors of any ſhare or ſhares in ſtock, dividend or dividends, thereby transferring or endeavouring to transfer and convey the ſame, or receiving or endeavouring to receive the money of ſuch true and lawful proprietor, as if ſuch offender were the true and lawful owner thereof; then, and in every ſuch caſe, every perſon ſo offending, and being thereof duly convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy.

VI. *And be it further enacted by the authority aforeſaid*, That if any director, officer or ſervant of the ſaid preſident, directors and company, being intruſted with any note, bill, obligation, ſecurity, money, effects or credits, belonging to the ſaid preſident, directors and company; or having any note, bill, obligation, ſecurity, money, effects or credits, of any other perſon or perſons, lodged or depoſited with the ſaid preſident, directors and company, or with him as an officer and ſervant thereof, ſhall ſecrete, embezzle, or run away with the ſame, or any part of them, every officer or ſervant ſo offending, and being thereof convicted in due form of law, ſhall be adjudged guilty of felony, and ſhall ſuffer death as a felon, without benefit of clergy. Perſons intruſted with notes, bills, &c. who ſhall ſecrete, embezzle, or run away with the ſame, upon conviction to ſuffer death.

[This act paſſed *March* 8, 1782.]

An Act to eſtabliſh a Bank in this State, and to incorporate the Subſcribers thereto.

Preamble.

WHEREAS the eſtabliſhment of a bank within this State will probably be of great publick utility, and as it will be particularly beneficial to the trading part of the community, and many perſons under the expectation of an act of incorporation from the Legiſlature of this Commonwealth, have accordingly ſubſcribed thereto; and whereas William Phillips, Iſaac Smith, Jonathan Maſon, Thomas Ruſſell, John Lowell *and* Stephen Higginſon, *Eſquires, in behalf of ſuch ſubſcribers, have applied for ſuch an act:*

Proprietors of the bank incorporated.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *William Phillips, Iſaac Smith, Jonathan Maſon, Thomas Ruſſell, John Lowell* and *Stephen Higginſon,* Eſquires, ſo long as they ſhall continue to be proprietors in the ſaid bank, together with all thoſe who are and thoſe who ſhall become proprietors to the ſaid bank, ſhall be a corporation and body politick, under the name of the Preſident and Directors of the *Maſſachuſetts'* Bank.

The corporation to be capable in law to have, hold, purchaſe, receive, poſſeſs, enjoy and retain lands, &c. to a certain amount.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid corporation are hereby declared and made able and capable in law, to have, hold, purchaſe, receive, poſſeſs, enjoy, and retain lands, rents and tenements, to the amount of *fifty thouſand pounds,* and no more at any one time, and alſo monies, goods, chattels and effects, to the amount of *five hundred thouſand pounds,* and no more, and alſo to ſell, grant, deviſe, alien, or diſpoſe of the ſame lands, rents, tenements, money, goods, chattels, and effects. *Provided,* That the ſaid preſident and directors, nor any or either of them, in their ſaid capacity, nor any perſon or perſons for or in behalf of the ſaid corporation or body politick, ſhall at any time, directly or indirectly, uſe or employ any money or monies of the ſaid corporation or body politic, in trade or commerce.

Proviſo.

The corporation to ſue and be ſued.

III. *And be it further enacted by the authority aforeſaid,* That the ſaid corporation ſhall be capable in law, to ſue and be ſued, plead and be impleaded, anſwer and be anſwered unto, defend and be defended, in all Courts of Record, or other Courts or places whatſoever; and to do and execute all and ſingular other matters and things, that to them ſhall or may appertain to do.

Officers to be appointed for the wellgoverning and ordering the affairs of the ſaid corporation.

IV. *And be it further enacted by the authority aforeſaid,* That for the well governing of the ſaid corporation, and the ordering their affairs, they ſhall have ſuch officers as they ſhall hereafter direct and appoint, and that ſuch officers as ſhall be deſignated by the laws and regulations of the ſaid corporation, for the purpoſe, ſhall be capable of exerciſing ſuch power, for the well governing and ordering the affairs of the ſaid corporation, and collecting and holding ſuch occaſional meetings for that purpoſe, as ſhall be fixed and determined by the ſaid laws and regulations.

IV. *And be it further enacted by the authority aforeſaid,* That the ſaid corporation may make, eſtabliſh, and put in execution, ſuch laws

laws and regulations as may be neceſſary to the government of the ſaid corporation, provided the ſame ſhall in no caſe be repugnant to the laws and conſtitution of this State. The corporation to make laws not repugnant to the laws of this State.

VI. *And be it further enacted by the authority aforeſaid,* That the ſaid corporation ſhall have full power and authority to make, have, and uſe a common ſeal, and the ſame to break, alter, and renew at pleaſure. Said corporation to have one common ſeal.

VII. *And be it further enacted by the authority aforeſaid,* That *William Phillips*, *Iſaac Smith* and *Jonathan Maſon*, Eſquires, be empowered to call a meeting of the ſubſcribers to the ſaid bank, at ſuch time and place as they may think convenient, by advertiſing the ſame in two of the *Boſton* news-papers, fifteen days before the time of holding the ſaid meeting, at which, or any future meeting of the ſtockholders, all matters ſhall be determined by the major votes of perſons preſent at ſuch meeting, who are ſtockholders, or who repreſent ſtockholders; the number of votes to be determined by the number of ſhares each voter holds or repreſents; ſave only, that nothing ſhall prevent the ſtockholders from determining, that the holders of a certain number of ſhares ſhall be preſent, or repreſented at the tranſaction of any particular buſineſs. *William Phillips*, Eſq. and others, to call a meeting of the ſubſcribers.

Provided always, That any perſon ſpecially appointed by the Legiſlature of this State, for that purpoſe, ſhall have a right to examine into the affairs of the bank, and ſhall at all times have acceſs to the bank books. Proviſo.

[This act paſſed *February* 7, 1784.]

An Act for granting or confirming certain Privileges to the Subjects of the Moſt Chriſtian King, reſiding within this State.

WHEREAS in and by the thirteenth article of the treaty of amity and commerce between his Moſt Chriſtian Majeſty and the United States of North America, *it is concluded and agreed that the ſubjects and inhabitants of the ſaid United States, or any of them, ſhall not be reputed aubains in* France, *and conſequently ſhall be exempted from the droit d'aubaine, or other ſimilar duty, under what name ſoever; they may by teſtament, donation or otherwiſe diſpoſe of their goods, moveable and immoveable, in favour of ſuch perſons as to them ſhall ſeem good; and their heirs, ſubjects of the ſaid United States, reſiding whether in* France *or elſewhere, may ſucceed them,* ab inteſtat, *without being obliged to obtain letters of naturalization, and without having the effect of this conceſſion conteſted or impeded, under pretext of any rights or prerogatives of provinces, cities or private perſons, and the ſaid heirs, whether ſuch by particular title or* ab inteſtat, *ſhall be exempt from all duty called* droit de detraction, *or other duty of the ſame kind, ſaving nevertheleſs the local rights or duties as much and as long as ſimilar ones are not eſtabliſhed by the United States, or* Preamble.

any of them. And that the ſubjects of the Moſt Chriſtian King ſhall enjoy on their part in all the dominions of the ſaid States, an entire and perfect reciprocity relative to the ſtipulations contained in the ſaid articles. And whereas it is reaſonable and juſt that the ſtrict conformity to the principles of equality and reciprocity, upon which the treaty aforeſaid between the contracting parties was grounded, ſhould be obſerved on the part of this State:

The ſubjects of the Moſt Chriſtian King not to be ſubject to the *droit d'aubaine.*

I. *Be it therefore enacted by the Council and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſubjects of the Moſt Chriſtian King, or any of them, ſhall not be reputed *aubains* within this State, and conſequently ſhall not be ſubject or liable to the *droit d' aubaine*, or other ſimilar duty, under what name ſoever; that they may by laſt will and teſtament, donation or otherwiſe, diſpoſe of their goods, moveable and immoveable, in favour of ſuch perſons as to them ſhall ſeem good; and their heirs, ſubjects of the ſaid Moſt Chriſtian King, reſiding whether in this State or elſewhere, may ſucceed them, *ab inteſtat*, without being obliged to obtain letters or an act of naturalization, and without having the effect of this conceſſion conteſted or impeded under any pretext whatſoever; and the ſaid heirs, whether ſuch by particular title, as legatees, or otherways, or *ab inteſtat*, ſhall not be ſubject or liable to any duty called *droit de detraction*, or other duty of the ſame kind, ſaving nevertheleſs the local rights or duties as much and as long as the ſubjects of this State are exempted from the ſaid duties and ſimilar ones by the ſaid Moſt Chriſtian King. And the ſubjects of the ſaid Moſt Chriſtian King ſhall enjoy within this State an entire and perfect reciprocity relative to the ſtipulations contained in the thirteenth article of the ſaid treaty on behalf of the ſubjects and inhabitants of the ſaid United States, or any one of them; any law, cuſtom or uſage to the contrary notwithſtanding.

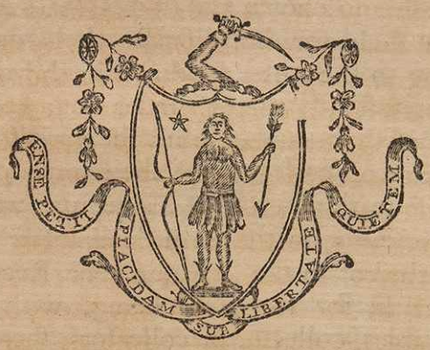
They may by will or otherwiſe diſpoſe of their goods.

Heirs not to be ſubject to any duty called *droit de detraction.*

Said ſubjects to enjoy within this ſtate an entire and perfect reciprocity.

[This act paſſed *May* 5, 1780.]

Perpetual



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART VI.

Taxes, &c.

An Act for the Choice and Appointment of Aſſeſſors, and for aſſigning their Powers and Authority.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That in the month of *March* annually, at the ſame meeting when other town and diſtrict officers are choſen, by the reſpective towns and diſtricts in this Commonwealth, there ſhall be choſen by the qualified voters then preſent and voting, or the major part of them, three, five, ſeven or nine meet perſons, to be Aſſeſſors of all ſuch rates and taxes as the General Court ſhall order and appoint ſuch town or diſtrict to pay, towards the charges of the government, within the ſpace of one year from the choice of ſuch Aſſeſſors, unleſs the warrant for the aſſeſſment ſhall not be by them received before the firſt day of *March* ſucceeding; and in caſe of its being received afterwards, it ſhall be delivered to their ſucceſſors in office, who ſhall be under the ſame obligations to make the aſſeſſment as their predeceſſors would have been under if they had ſeaſonably received the ſame, who ſhall alſo be the Aſſeſſors of county, town and diſtrict taxes; and each Aſſeſſor ſo choſen, ſhall within the ſpace of ſeven days next after being notified thereof, be ſworn before a Juſtice of the Peace, or before the town or diſtrict Clerk, to the faithful diſcharge of his duty, in the form hereafter preſcribed;

Aſſeſſors to be choſen annually, in the month of *March*.

Aſſeſſors to be ſworn.

Their duty.

ed ; and the Aſſeſſors ſo choſen and ſworn, ſhall aſſeſs the polls of, and eſtates within ſuch town or diſtrict, their due proportion of any tax, according to the rules ſet down in the act for raiſing the ſame, and make perfect liſts thereof under their hands or the hands of the major part of them, and commit the ſame to the conſtable or conſtables, collector or collectors of their town or diſtrict, if any there be, otherwiſe to the ſheriff, or his deputy, with a warrant under their hands and ſeals, in the form herein after directed, and return a certificate thereof to the Treaſurer or Receiver-General of this Commonwealth, for the time being, with the name of the conſtable or conſtables, collector or collectors, ſheriff or his deputy, to whom they ſhall have committed the ſame aſſeſſment, with a warrant as aforeſaid to collect ; and the ſaid Aſſeſſors ſhall alſo have their aſſeſſment recorded in the town or diſtrict book, or leave an exact copy thereof, by them ſigned, with the town or diſtrict Clerk, or file ſuch copy in the Aſſeſſors office, where any ſuch is kept, before the ſame ſhall be committed to a conſtable or collector, the ſheriff or his deputy to collect, and at the ſame time ſhall lodge in the ſaid Clerk's office the invoice or valuation, or a copy thereof, from whence the rates or aſſeſſments are made, that the inhabitants, or others rated, may inſpect the ſame ; and if any Aſſeſſor, after being choſen and notified to take the oath of an Aſſeſſor in the way and manner other town officers are notified and ſummoned, ſhall neglect to appear, or appearing ſhall refuſe to be ſworn, he ſhall forfeit and pay the ſum of *five pounds* for the uſe of the poor of the town or diſtrict reſpectively, to be recovered by their reſpective Treaſurers before the Court of General Seſſions of the Peace for the county in which ſuch town or diſtrict lies, by complaint, which for ſubſtance ſhall be as follows :

Aſſeſſors, after being choſen & notified, neglecting to appear, or refuſing to be ſworn.

Penalty.

To be recovered by complaint, before the Court of Seſſions.

Form of the complaint:

TO the Juſtices of the Court of General Seſſions of the Peace for the county of to be held at within and for the county aforeſaid, on the Tueſday of next. Complains *A. B.* Treaſurer of the of that *C. D.* of [*addition*] on the day of laſt, was duly and legally choſen by the qualified voters of the ſaid to ſerve as an Aſſeſſor thereof, and that the ſaid *C. D.* was notified to take the oath of that office as the law directs ; yet the ſaid *C. D.* has, for the ſpace of ſeven days after being notified as aforeſaid, neglected and ſtill neglects to take the ſaid oath, whereby he hath forfeited the ſum of *five pounds* for the uſe of the poor of the ſaid wherefore your complainant prays that a warrant of diſtreſs may be iſſued againſt the ſaid *C. D.* for the forfeiture aforeſaid, in form and manner as the law directs. Dated at the day of *Anno Domini*, 17

A. B. Treaſurer.

Same form may be uſed to recover penalties of other town officers.

And the ſame form, *mutatis mutandis*, may be uſed in the recovery of any penalty which may be incurred by any perſon choſen as a town, diſtrict, plantation, pariſh or precinct officer, who ſhall neglect to take the oath of office as required by law ; and the Selectmen

men of every ſuch town or diſtrict, when any one or more of the Aſſeſſors ſo choſen ſhall refuſe as aforeſaid, ſhall forthwith, after notice thereof, ſummon a meeting of the qualified voters of ſuch town or diſtrict, to chuſe an Aſſeſſor or Aſſeſſors in the room of ſuch Aſſeſſor or Aſſeſſors ſo refuſing; which voters, ſo aſſembled, ſhall accordingly chuſe ſo many Aſſeſſors as ſhall be wanting to compleat the number which the town or diſtrict, at the time of the firſt choice, voted ſhould be elected.

When aſſeſſors ſhall ſo refuſe, ſelectmen ſhall ſummon a meeting for a new choice.

Provided always, That it ſhall be in the power of the Court of General Seſſions of the Peace, for the ſame county, upon reaſonable excuſe made to them by any Aſſeſſor that ſhall refuſe to accept as aforeſaid, to remit, if they ſee cauſe, the penalty aforeſaid.

Court of Seſſions may remit the penalty, if they ſee cauſe.

II. *And be it further enacted*, That if any town or diſtrict ſhall not chuſe Aſſeſſors as aforeſaid, or if ſo many of them ſo choſen, ſhall refuſe to accept, as that there ſhall not be ſuch a number of them as any town or diſtrict ſhall vote to be the Aſſeſſors thereof, then the Selectmen of ſuch town or diſtrict ſhall be, and hereby are declared and appointed the Aſſeſſors thereof; and every one of them ſhall be duly ſworn to the diſcharge of the truſt; and each Aſſeſſor ſhall be paid out of the town or diſtrict treaſury, *four ſhillings* for each whole day he ſhall be neceſſarily employed in that ſervice.

If towns ſhall not chuſe, or aſſeſſors refuſe to accept, ſelectmen to be declared aſſeſſors and ſworn.

Aſſeſſors pay.

III. *And be it further enacted*, That if any town or diſtrict ſhall neglect to make choice of Selectmen or Aſſeſſors, the ſaid default being made known unto the Court of General Seſſions of the Peace within the ſame county, ſuch town or diſtrict ſhall forfeit and pay a ſum not exceeding *one hundred pounds*, nor leſs than *thirty pounds*, as the Court of Seſſions ſhall order, for the uſe of this Commonwealth; and in ſuch caſe, as alſo where neither the Selectmen nor Aſſeſſors choſen by any town or diſtrict ſhall accept the truſt, or having accepted the truſt ſhall not perform their duty, the Court of General Seſſions of the Peace in the ſame county, ſhall be, and hereby are empowered to nominate and appoint three or more ſufficient freeholders within ſuch county, to be Aſſeſſors of the rates or taxes in ſuch town or diſtrict as aforeſaid, which Aſſeſſors ſo appointed, after being duly ſworn, ſhall aſſeſs the polls and eſtates within ſuch town or diſtrict, their due proportion to any tax, according to the rules ſet down in the act for raiſing the ſame, together with the aforeſaid penalty, where the town or diſtrict makes default as aforeſaid, and ſuch additional ſum as ſhall anſwer their own reaſonable charges for time and expence in the ſaid ſervice, not exceeding *ten ſhillings* per day for each man ſo employed; and having made ſuch aſſeſſment, ſhall iſſue a warrant under their hands and ſeals for collecting the ſame, and tranſmit a certificate thereof to the Treaſurer, with the name of the conſtable, collector, ſheriff, or his deputy, to whom they ſhall commit the ſame to be collected; and ſuch Aſſeſſors ſhall be paid their charges as aboveſaid, the ſame being adjuſted and certified by two or more Juſtices of the Court by whom they were appointed Aſſeſſors, under their hands, out of the public treaſury, by warrant from the Governour, with the advice and conſent of Council.

Penalty for neglecting to chuſe ſelectmen or aſſeſſors.

In ſuch caſe, as alſo where ſelectmen nor aſſeſſors accept, or neglect to perform their duty; the Court of Seſſions to appoint aſſeſſors.

Their duty.

Such aſſeſſors to be paid out of the public treaſury.

Aſſeſſors ſhall duly obſerve all ſuch warrants as they ſhall receive from the Treaſurer.

IV. *And be it further enacted,* That all Aſſeſſors choſen or appointed as aforeſaid, ſhall duly obſerve all ſuch warrants as during the time of their office they ſhall receive from the Treaſurer or Receiver-General, purſuant to an act or acts made and paſſed by the General Court of this Commonwealth, for the aſſeſſing and apportioning any rate or tax upon the inhabitants or eſtates within the town or diſtrict whereof they are Aſſeſſors, on pain that the Aſſeſſors of any town or diſtrict failing of their duty required by ſuch warrant of the Treaſurer, ſhall forfeit and pay the full ſum in ſuch warrant mentioned, to be by them aſſeſſed, to the uſe of the Commonwealth, which ſhall be levied by diſtreſs and ſale of the eſtates, real and perſonal, of ſuch deficient Aſſeſſors, by warrant from the Treaſurer, directed to the ſheriff of the county, or his deputy, in which ſuch town or diſtrict lies; and the Treaſurer is hereby authorized and required in ſuch caſe, *ex officio,* to iſſue his warrant requiring the ſheriff or his deputy to levy the ſaid ſums accordingly, and for want of eſtate to take the bodies of ſuch deficient Aſſeſſors, and impriſon them until they pay the ſame; which warrant the ſheriff, or his deputy, is hereby empowered and required to execute accordingly; and the Court of General Seſſions of the Peace in the county where ſuch deficient Aſſeſſors dwell, ſhall be, and hereby are directed and empowered forthwith to appoint other meet perſons to be Aſſeſſors of ſuch rates or taxes, according to the directions contained in the Treaſurer's warrant iſſued unto the former Aſſeſſors; and the Aſſeſſors who ſhall be ſo appointed, ſhall take the oath and perform the ſame duties, and be liable to the ſame penalties as the former Aſſeſſors.

Forfeiture in caſe of neglect.

To be levied by diſtreſs.

Court of Seſſions to appoint other meet perſons to be aſſeſſors.

V. *And be it further enacted,* That the oath to be adminiſtered to the Aſſeſſors, choſen or appointed as this act preſcribes, ſhall be in the form following:

Form of the oath to be adminiſtered to aſſeſſors.

You *A. B.* one of the Aſſeſſors for the of *C.* for the year enſuing, do ſwear, that you will proceed equally and impartially, according to your beſt ſkill and judgment, in aſſeſſing and apportioning all ſuch rates and taxes, as you may according to law be directed to aſſeſs and apportion during that time.

So help you GOD.

VI. *And be it further enacted,* That the warrant to be iſſued by the Selectmen or Aſſeſſors, for the collecting and gathering in of the State rates or aſſeſſments, ſhall be in ſubſtance as follows:

L.S. ——ſſ. *To* A. B. *Conſtable or Collector of the town of within the county of Greeting.*

Form of the warrant to be iſſued by ſelectmen or aſſeſſors, for the collection of ſtate taxes.

IN the name of the Commonwealth of *Maſſachuſetts,* you are required to levy and collect of the ſeveral perſons named in the liſt herewith committed unto you, each one, his reſpective proportion, therein ſet down, of the ſum total of ſuch liſt, it being this town's proportion of a tax or aſſeſſment of *pounds ſhillings* and

and *pence*, granted and agreed upon by the General Court of said Commonwealth, at their session, begun and held at *B.* on the day of for defraying the necessary charges of securing, protecting and defending the same; and you are to transmit and pay in the same unto Treasurer and Receiver-General of this Commonwealth, or to his successor in that office, and to compleat, and make up an account of your collections of the whole sum, on or before the day of and if any person shall refuse or neglect to pay the sum he is assessed in the said list, to distrain the goods or chattels of such person, to the value thereof; and the distress so taken, to keep for the space of four days, at the cost and charge of the owner; and if he shall not pay the sum so assessed, within the said four days, then you are to sell at public vendue, the distress so taken, for the payment thereof, with charges; first giving forty-eight hours notice of such sale, by posting up advertisements thereof, in some public place in the town, district, or plantation (as the case may); and the overplus arising by such sale, if any there be, besides the sum assessed, and the necessary charges of taking and keeping the distress, you are immediately to restore to the owner; and for want of goods or chattels, whereon to make distress (besides tools or implements necessary for his trade or occupation, beasts of the plough necessary for the cultivation of his improved lands, arms, utensils for house-keeping necessary for upholding life, bedding and apparel necessary for himself and family,) for the space of twelve days, you are to take the body of such person, so refusing or neglecting, and him commit unto the common goal of the county, there to remain, until he pay the same, or such part thereof, as shall not be abated by the Assessors, for the time being, or the Court of General Sessions of the Peace, for the said county.

Given under our hands and seals, by virtue of a warrant from the Treasurer aforesaid, this day of 17

A. B. }
C. D. } Assessors.

And the certificate of the assessment of any State tax shall be in substance as follows:

Certificate of the assessment of any state tax.

PURSUANT to a warrant from the Treasurer of the Commonwealth of *Massachusetts*, dated the day of , *Anno Domini* . We have assessed the polls and estates of the of the sum of and have committed lists thereof to the of said *viz.* to with warrants in due form of law, for collecting and paying in the same to Treasurer of said Commonwealth, or his successor in office, on or before the day of next ensuing.

In witness whereof, we have hereunto set our hands at this day of , *Anno Domini* .

A. B. }
C. D. } Assessors.

VII. *And be it further enacted*, That the warrant to be issued for collecting county, town, district, plantation, precinct or parish rates or assessments, shall also be made out by the Assessors thereof in the same tenor, *mutatis mutandis*.

Warrants for town taxes, &c. to be in the same form.

VIII.

Manner of apportioning and aſſeſſing county and town taxes, &c.

VIII. *And be it further enacted*, That all county, town, diſtrict, precinct, plantation and pariſh rates and taxes, ſhall be aſſeſſed and apportioned by the Aſſeſſors of the ſeveral towns, diſtricts, plantations, precincts and pariſhes within this Commonwealth, upon the polls of, and eſtates within the ſame, according to the rules that ſhall from time to time be preſcribed and ſet, in and by the then laſt tax act of the General Court; and ſuch Aſſeſſors ſhall cauſe atteſted copies of ſuch aſſeſſments and valuations, to be lodged in the Clerk's office of the place where the ſame are made, or file the ſame in their own office, if any ſuch they have.

Aſſeſſors of each town to give ſeaſonable warning to the inhabitants to bring in liſts of their polls and eſtates.

IX. *And be it further enacted by the authority aforeſaid*, That the Aſſeſſors of each town, diſtrict, plantation, precinct and pariſh reſpectively, in convenient time, before they proceed to make any aſſeſſment, ſhall give ſeaſonable warning to the inhabitants, at any of their reſpective meetings, or by poſting up notifications in ſome publick place in ſaid town, diſtrict, plantation, precinct or pariſh, as the caſe may be, or notify the reſpective inhabitants in ſome other way, to make and bring into them the ſaid Aſſeſſors, true and perfect liſts of their polls, and of their eſtates, both real and perſonal (ſaving ſuch eſtate as is or may by law, from time to time, be exempted from taxation) which they were poſſeſſed of, at ſuch periods as the General Court may from time to time order and direct; and if any perſon or perſons, ſhall not bring in a liſt of their eſtates, as aforeſaid, to the Aſſeſſors, he, ſhe, or they ſo neglecting or refuſing, ſhall not be admitted to make application to the Court of General Seſſions of the Peace, for any abatement of the aſſeſſment ſo laid on him, her or them; unleſs ſuch perſon or perſons ſhall make it appear to the ſaid Court, that it was not within the power of him, her, or them, to deliver to the Aſſeſſors reſpectively, a liſt of his, her or their rateable eſtate, at the time appointed for that purpoſe; and if the Aſſeſſors ſuſpect any falſehood in the liſt to them preſented, of polls or eſtates as aforeſaid, then the ſaid Aſſeſſors, or either of them, ſhall require the perſon preſenting ſuch liſt, to make ſolemn oath that the ſame is true, which oath the Aſſeſſors, or either of them, are hereby empowered to adminiſter; and ſuch liſt being exhibited on oath, ſhall be a rule for that perſon's proportion of the tax, who preſented the ſame, which the Aſſeſſors may not exceed, unleſs they ſhall diſcover any error therein; in which caſe, the Aſſeſſors are hereby authorized and directed to aſſeſs ſuch articles as appear to be kept back.

Perſons refuſing ſhall not be admitted to make application for abatement.

If Aſſeſſors ſuſpect falſehood in the liſt preſented, they may require an oath.

Perſons aggrieved at the ſum ſet upon them, ſhall have a reaſonable abatement by the Aſſeſſors.

X. *And be it further enacted*, That if any perſon or perſons ſhall at any time be aggrieved at the ſum or ſums ſet and apportioned upon him, or them, by the Aſſeſſors of any town, diſtrict, plantation or pariſh, and ſhall make it appear unto the Aſſeſſors, for the time being, of ſuch town, diſtrict, plantation or pariſh, that he, or they, are rated more than his or their proportion, according to the rules given in the act or acts, of the General Court, for making the ſaid aſſeſſment, in ſuch caſe the ſaid Aſſeſſors, for the time being, ſhall make a reaſonable abatement to the perſon or perſons ſo aggrieved; and if they ſhall refuſe ſo to do, ſuch perſon or perſons complaining, in writing, unto the next Court of General Seſſions of the Peace, within that county, and making it appear, that he, or they, are over

rated

rated as aforeſaid, he, or they, ſhall be relieved by the ſaid Court, and ſhall be reimburſed out of the treaſury of the town, diſtrict, plantation or pariſh, where ſuch aſſeſſment was made, ſo much as the ſaid Court or Aſſeſſors reſpectively ſhall ſee cauſe to abate him, or them, with the charges; and the ſaid Court of General Seſſions of the Peace, are empowered, on ſuch complaint being made, to require the Aſſeſſors, or Clerk, to produce the valuation, by which the aſſeſſment is made, or a copy thereof.

When Aſſeſſors refuſe, perſons may complain to the Court of Seſſions.

XI. *Be it further enacted*, That the Aſſeſſors for any town, diſtrict, plantation, precinct or pariſh, from time to time, may, and are hereby authorized and empowered to apportion on the polls and eſtates, according to law, ſuch additional ſum, over and above the preciſe ſum to them committed to aſſeſs, as any fractional diviſions of ſuch preciſe ſum may render convenient in the apportionment thereof; not exceeding *five per centum* on the ſum taxed—*Provided* the whole exceſs ſhall in no caſe amount to more than the ſum of *forty pounds*, the ſurplus ſum ſhall be paid into the treaſury of ſuch town, diſtrict, plantation, precinct or pariſh, and ſhall be ſubject to the order and diſpoſal of ſuch town, plantation, precinct, diſtrict, or pariſh; and it ſhall be the duty of ſuch Aſſeſſors, to certify ſuch town, diſtrict, plantation, precinct or pariſh Treaſurer thereof.

Aſſeſſors may apportion ſuch additional ſum, as any fractional diviſion of the preciſe ſum may render convenient.

Proviſo.

XII. *And be it further enacted*, That all plantations, which ſhall from time to time be ordered by the General Court, to pay any part or proportion of the publick taxes, ſhall be, and they hereby are fully veſted with all the powers, that towns in this Commonwealth by law are, ſo far as relates to the choice of Aſſeſſors of taxes; and any perſon who ſhall be choſen to the office of an Aſſeſſor of taxes, in any of the aforeſaid plantations, and ſhall refuſe to accept of the office to which he ſhall have been elected, or neglect to take the oath by law required to be taken by Aſſeſſors of taxes in towns, ſhall be liable to the ſame penalties, to be recovered in the ſame way and manner, as by this act is provided in the caſe of Aſſeſſors refuſing to accept ſuch office, when choſen by towns.

Plantations veſted with the powers of towns, in the choice of Aſſeſſors.

XIII. *And be it further enacted*, That if any of the plantations aforeſaid, ſhall neglect to chooſe Aſſeſſors as aforeſaid, or if the Aſſeſſors choſen by any ſuch plantation, and accepting ſuch truſt, ſhall be remiſs or neglect their duty; in every ſuch caſe, ſuch plantation ſhall be ſubject to the ſame penalties, and be proceeded with in the ſame manner, as by this act is provided, in the caſe of deficient towns; and ſuch deficient Aſſeſſors ſhall be, and hereby are made liable to the ſame penalties, to be recovered by the ſame proceſs as by this act is provided, in the caſe of deficient Aſſeſſors, choſen by towns.

Subject to the ſame penalties in caſe of neglect.

And whereas the county tax may often be ſo ſmall as that it would be inconvenient to make a ſeparate liſt of each perſon's proportion of it:

Be it therefore enacted, That in ſuch caſe it ſhall and may be lawful for the Aſſeſſors of any town, diſtrict or plantation, to add their proportion of the county tax to any of their other taxes, and make out warrants and certificates accordingly.

Aſſeſſors in certain caſes, may add the county to any of their other taxes.

XIV. *And be it further enacted*, That in the month of *March* annually, at the time other precinct and pariſh officers are choſen by

Precincts and parishes shall choose Assessors in the month of *March*, annually.

the respective precincts and parishes in this Commonwealth, there shall be chosen by the qualified voters then present and voting, or the major part of them, three or five meet persons to be Assessors of all such rates and taxes as shall be agreed upon and granted by their respective precincts and parishes at their meetings regularly warned for that purpose, who shall be sworn to the faithful discharge of their trust, in the form before prescribed in this act.

Warrants against Sheriffs to be served by a Coroner.

XV. *Be it further enacted*, That where any warrant by virtue of this act is to be directed to the sheriff of any county, or his deputy, and the person, or any one of the persons against whom such warrant may be granted, shall be a sheriff or deputy-sheriff for such county, in such case, the warrant shall be directed to and served by a coroner of the same county.

[This act passed *February* 20, 1786.]

An Act for the Choice and Appointment of Collectors of Rates and Taxes, and for ascertaining their Power and Duty.

Towns empowered to choose Collectors of taxes, and agree upon their pay.

BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the qualified voters of any town or district, at the same time they choose Constables, may, if they see cause, likewise choose some meet person or persons to be Collector or Collectors of the rates or taxes that shall be assessed upon such town or district, and agree upon what sum shall be allowed and paid unto such Collector or Collectors for his or their services; but if such Collector or Collectors so to be chosen shall refuse to serve, or if no Collector shall be chosen, then the Constable or Constables of such town or district shall collect and gather such rates and taxes; and every Collector of taxes, or Constable, shall have a warrant from the Selectmen or Assessors, empowering him to collect such rates or taxes as shall be committed to him to collect, and he shall pay in the same according to the directions in such warrant; and in case any Constable or Collector of taxes decease before his perfecting the collection of any assessment committed to him to collect and pay into the state treasury, the Assessors for the time being, of such town, district or plantation, shall nominate and appoint, at the charge of such town, district, or plantation, some other fit person or persons to perfect the same collection, and enable and empower such person or persons to collect the same, by granting a warrant to him or them for that purpose.

II. *And be it further enacted*, That if any person shall refuse to pay the sum or sums which he shall be assessed as his proportion to any rate or tax, in the list committed to any Constable or Collector, under the hands of the Assessors of such town, district, plantation, precinct

precinct or parish, or the major part of them, upon demand thereof made by such Constable or Collector, by virtue of the warrant to him given, it shall any may be lawful to and for such Constable or Collector, and he is hereby authorized and required, in such case, to distrain the person so refusing by his goods or chattels, and the distress so taken to keep the space of four days at the cost and charge of the owner thereof; and if the owner do not pay the sum or sums of money so assessed on him within the space of four days, then the said distress shall be openly sold at publick auction, by the said officer, for the payment of the said money, notice of such sale being posted up in some publick place in the same town, district, plantation, precinct or parish, forty-eight hours before the sale, and after the expiration of the four days aforesaid; and the overplus arising by such sale, if any, over and above the charge of taking and keeping the said distress, to be immediately restored to the former owner, with an account in writing of the sale and charges; and if any person assessed as aforesaid to the state or other tax, shall refuse or neglect to pay the sum or sums so assessed, by the space of twelve days after demand thereof, and shall neglect to shew the Constable or Collector sufficient goods or chattels whereby the same may be levied, in every such case, he may take the body of the person so refusing, and him commit unto the common gaol of the county, there to remain until the same be paid, or he therefrom be discharged by due order of law.

Persons who refuse to pay the sums assessed, shall be distrained by their goods or chattels.

If not paid within four days, the distress shall be sold at auction.

Overplus to be restored.

Persons who refuse to pay state or other taxes, for the space of twelve days, may be committed to goal.

Provided nevertheless, That in all cases where there are, in the opinion of the Assessors, or a major part of them, just grounds to fear that any person or persons, assessed as aforesaid, may abscond before the expiration of the said twelve days, in such cases, it shall be in the power of the Constable or Collector to demand immediate payment.

Proviso;

III. *And be it further enacted*, That where any town or district shall neglect to choose a Constable or Collector, or if any plantation shall neglect to choose a Collector to gather the rates or taxes granted by the General Court, that in such case the Sheriff of the county, or his deputy, shall be, and hereby is empowered and directed to collect such rates or taxes, having received an assessment made of the proportion of the several persons rateable in such town, district or plantation, together with a warrant under the hands of such Assessors as shall be appointed by the Court of General Sessions of the Peace, in the county where such deficient town, district or plantation lies, or under the hands of the Assessors of such town, district or plantation, duly chosen by them respectively.

When towns, &c. neglect to choose Constables or Collectors, Sheriffs are empowered to collect taxes.

IV. *And be it further enacted*, That the Sheriff, or his deputy, upon the receiving such assessment and warrant for collecting it, shall forthwith post in some publick place of the town, district or plantation assessed, an attested copy of such assessment and warrant, and shall make no distress for any of the sums so assessed, until after thirty days from his posting it up; and any person or persons paying the sum or sums respectively assessed on him or them to the Sheriff, before the expiration of the aforesaid thirty days, shall pay at the

Sheriff to make no distress until thirty days from his posting up the assessment and warrant for collecting it.

Sheriff's fees.

the rate of *five per centum* over and above the ſum aſſeſſed, to the Sheriff, for his fees, and no more; but all ſuch as ſhall neglect to pay the ſum or ſums aſſeſſed beyond the thirty days after poſting up the copy of the aſſeſſment as aforeſaid, ſhall be proceeded againſt by the Sheriff, by way of diſtreſs or commitment to goal, in the manner Collectors are by this act directed and empowered to diſtrain or commit to goal; and the ſaid Sheriff, or his deputy, may require ſuitable aid for that purpoſe, and they ſhall each one pay the fees for the Sheriff's ſervice and travel, as in other caſes where diſtreſs is made, or the perſon committed.

When perſons remove, not having paid their aſſeſſment, Conſtables or Collectors may demand the ſame in what place ſoever found.

V. *And be it further enacted*, That when any perſon ſhall remove from any town or place where he lived, or had his reſidence, at the time of making the liſt of any ſtate, town, county, precinct, plantation, or pariſh tax or aſſeſſment, not having before paid the reſpective ſum or ſums ſet upon him by ſuch liſts, it ſhall and may be lawful for the Conſtable or Collector, to whom any ſuch tax or aſſeſſment ſhall be committed, with a warrant to collect, and he is hereby authorized and empowered, to demand the ſum or ſums aſſeſſed upon ſuch perſon in what town or place ſoever, within this Commonwealth, he may be found, and upon refuſal or neglect to pay the ſame, to diſtrain the ſaid perſon by his goods or chattels as aforeſaid; and for want of ſuch diſtreſs to commit the party to the common goal of the county where he ſhall be found, there to remain until payment be made.

How Collectors ſhall proceed with proprietors of real eſtate removing from the place where ſuch eſtate lies, after the ſame is aſſeſſed.

VI. *Be it enacted by the authority aforeſaid*, That if any owner or proprietor of land or other real eſtate ſhall remove out of the town, diſtrict, plantation, precinct, or pariſh, where ſaid land, or other real eſtate lays, after the ſame is aſſeſſed, to ſome other place within this Commonwealth or out of the limits thereof, and ſhall neglect or refuſe to pay the ſaid aſſeſſment by the ſpace of three months, from and after the time of ſuch removal, and if the Collector or Collectors, to whom ſuch aſſeſſment ſhall be legally committed, cannot within the ſaid three months find any perſonal eſtate belonging to ſuch perſon ſo removed, ſufficient to pay the ſame, then ſuch Collector or Collectors ſhall proceed to ſell ſo much of the ſaid land or other real eſtate, as will amount to the aſſeſſment aforeſaid, together with the charges of ſuch ſale, in the ſame manner as is herein after provided for the ſale of lands belonging to non-reſident proprietors for the payment of taxes.

Directions to Collectors with reſpect to unimproved lands of non-reſidents or improved lands of proprietors living out of the Commonwealth.

VII. *And be it further enacted*, That where no perſon appears to diſcharge the taxes on the unimproved lands of non-reſident proprietors, or improved lands of proprietors living out of the limits of this Commonwealth to the Collector thereof, he ſhall advertiſe in the publick news-papers of the printer to the General Court for the time being, three weeks ſucceſſively, the names of all ſuch proprietors, where they are by him known, with the ſum of the taxes aſſeſſed on their lands reſpectively, and alſo the time and place of ſale; and where they are not known, he ſhall in the ſame manner, publiſh the ſum of the taxes on the ſeveral rights, numbers of lots, or diviſions; and where the name of the place in which ſuch lands lay,

lay, may have been altered by any act of this Commonwealth, within three years next preceeding such advertisement, he shall express not only the present name, but the name by which the same was last known; and in either case shall post the same in some convenient and conspicuous place in the same town or plantation, as the case may be, where the said lands lay, and in three of the adjoining towns, at least, for the term of three weeks previous to the time appointed for such sale; and if no person shall appear thereupon to discharge the said taxes, and all necessary intervening charges, then the Collector aforesaid shall proceed to sell at publick auction to the highest bidder (after waiting two hours from the time appointed for said sale) so much only of the said lands as shall be sufficient to discharge said taxes, and the necessary intervening charges, having first given notice of the intended sale thereof, and the time and place when and where the same will be made as aforesaid; and shall have power to adjourn from day to day (if necessary) to complete the said sale, not to exceed three days (waiting as aforesaid) and shall give and execute a deed or deeds to the purchaser or purchasers, his or their heirs and assigns, expressing therein the cause of such sale, and saving to the aforesaid proprietor or proprietors, the right of redemption of any lands so sold, within any time for the space of two years from the time of such sale; and the same shall be reconveyed to him or them the said proprietor or proprietors, on paying within two years as aforesaid, the sum such land sold for, with interest at the rate of *ten per cent.* per annum on said sum, together with all necessary intervening charges. *Provided nevertheless*, That the purchaser or purchasers as aforesaid shall not make any strip or waste on the premises until the time of redemption shall have expired; and if the said purchaser or purchasers shall make any strip or waste on the premises, as aforesaid, he or they shall be liable to pay all damages to the original owner or owners, in as full and ample a manner as if he or they had not purchased the same.

When no person appears to discharge taxes, after being notified, Collectors to proceed to sell so much land as will discharge the same.

Empowered to execute a deed to the purchaser.

Proviso.

VIII. *And be it further enacted*, That when any State or other rate or tax shall be made payable at two or more several times, or days of payment, and any person being an inhabitant or dweller in any town, district or plantation, within this Commonwealth, at the time of making such rate or tax, and being assessed thereunto, shall be about to remove from thence before the time that shall be prefixed for payment of the same, it shall and may be lawful for the Constable or Collector of the same town, district or plantation, to demand and levy the whole sum which such person may be assessed in his list or lists, notwithstanding the time for collecting the second part of such rate or tax may not then have arrived, and in default of payment to distrain for the same, or to take such other course for the obtaining thereof as is herein before provided; and when the Constables or Collectors be anew chosen and sworn, in any town, district, plantation, precinct or parish, before the former Constables or Collectors have perfected their collection of any State or other tax or assessment to them committed to collect, such former Constables or Collectors are hereby fully empowered and requir-

When taxes are made payable at two or more times of payment, and persons are about to remove, Collectors may demand and levy the whole sum.

In default of payment, to distrain for the same.

When Constables or Collectors are anew chosen, former ones empowered to perfect their collections.

ed to perfect all such collections, and shall and may exercise the same powers and authority for the collecting and enforcing the payment thereof, as by this act they might have done before other Constables or Collectors were chosen and sworn.

If Collectors are hindered in the execution of their office, they may require aid.

XIX. *And be it further enacted*, That if any of the Collectors of the State, county, town, district, precinct or parish rates and taxes, when in the execution of their office, shall be hindered or impeded in collecting the rates and taxes committed to them, it shall be lawful for such Collectors to require some meet person or persons to aid and assist them therein; and that all persons so required who shall refuse their aid and assistance, shall severally pay a fine to the poor of the town, district, or plantation where the offence may arise, not exceeding *forty shillings*, at the discretion of the Justice before whom the conviction may be had, by complaint or information in writing, according to the circumstances of the offence; *Provided* that it appears to the Justice, that the aid so demanded as aforesaid, was necessary; and on default of payment of the fine imposed, the Justice may order the offender to be committed to the common goal of the county for the space of forty-eight hours.

Penalty for refusing aid.

Proviso.

When owners or tenants of improved lands do not reside where such land lies; directions in this case.

XX. *And be it further enacted*, That where the owner or tenant of any improved lands, liable to pay taxes, shall not reside, or be an inhabitant of the town, district, plantation, precinct, or parish in which such lands lie, and no stock, corn or hay, can be found upon the said lands, whereof the Constable or Collector may make distress to satisfy such sum or sums, as from time to time such lands shall be assessed, either to the State, county, town, district, plantation, precinct, or parish, in such case any Justice of the Peace in the county where the owner or tenant of any such lands lives, upon application to him made in writing, by the Constable or Collector, to whom the list, wherein such lands shall be assessed, shall be committed, and upon sight of the same, or an authenticated copy thereof, may and hereby is empowered and required to grant a warrant unto the Constable of the town or place where such occupant dwells or resides, to distrain such owner or occupant, by his goods or chattles, the full sum at which the said lands are set in such list or assessment, with the charges occasioned by making such distress; and to satisfy the same by sale thereof, returning the overplus, if any there be, to the owner; and in case no goods or chattels can be found, whereon to distrain, to commit the party to the common goal of the county, there to remain until he pay and satisfy the sum or sums so assessed, with the charges.

When persons are committed to prison, the officer shall give a copy of the warrant to the keeper.

XXI. *And be it further enacted*, That when any officer appointed for collecting any rates or assessments, by virtue of any warrant, shall for want of goods or chattels, whereof to make distress, take the body of any person, and commit him to prison, he shall give an attested copy of his warrant unto the keeper of the prison, and thereupon certify under his hand, the sum such person is to pay as his proportion to the assessment, with the cost of taking and commiting; and that for want of goods or chattles whereon to make distress he has taken his body; and such attested copy with the certificate thereon under the hand of the officer, shall be a sufficient warrant

to

to require the priſon keeper to receive and keep ſuch perſon in cuſtody until he ſhall pay his rate or aſſeſſment as aforeſaid, and charges of impriſonment, with *two ſhillings* for the copy of the warrant.

Provided nevertheleſs, Any perſon committed to goal for his taxes, ſhall have the liberty of the goal yard, upon his procuring ſufficient bonds as is by law directed for other debtors. Proviſo.

XXII. *And be it further enacted*, That all plantations, which ſhall from time to time be ordered by the General Court to pay any part or proportion of the public taxes, ſhall be, and they hereby are fully veſted with all the powers that towns in this Commonwealth by law are veſted with, ſo far as relates to the choice of Collectors of taxes; and any perſon who ſhall be choſen to the office of a Collector of taxes in any of the aforeſaid plantations, and ſhall refuſe to accept of the office, to which he ſhall have been elected, or neglect to take the oath by law required to be taken by Collectors of taxes in towns, ſhall be liable to the ſame penalties, to be recovered by the Clerk of the plantation for the uſe thereof, in the ſame way and manner as by this act are provided in the caſe of Collectors refuſing to accept ſuch office when choſen by pariſhes or precincts. Plantations that pay taxes, veſted with the powers of towns, relating to the choice of Collectors.

XXIII. *And be it further enacted*, That if any of the plantations aforeſaid ſhall neglect to chooſe Collectors as aforeſaid, or if the Collectors choſen by any ſuch plantation, and accepting ſuch truſt, ſhall be remiſs or neglect their duty, in every ſuch caſe, ſuch plantation ſhall be proceeded with, in the ſame manner, as by this act is provided in the caſe of deficient towns, and ſuch deficient Collectors ſhall be, and hereby are made liable to the ſame penalties, to be recovered by the ſame proceſs as by this act is provided in the caſe of deficient Collectors choſen by towns. To be proceeded with, in caſe of neglect, in the ſame manner as deficient towns.

XXIV. *And be it further enacted*, That in all caſes where any perſon or perſons who may be taxed for any real eſtate in their poſſeſſion, may not be owners or proprietors of ſuch eſtate, it ſhall be the duty of every Collector on whoſe rate bill the name or names of any ſuch perſon or perſons ſhall be borne, to demand as ſoon as may be, after ſuch bill ſhall be regularly committed to him, the full amount of the taxes that may be therein aſſeſſed upon ſuch perſon or perſons reſpectively; and that all cattle, ſheep, horſes, ſwine or other ſtock, and alſo all the produce of any ſuch eſtate which then, or within nine months from the time ſuch aſſeſſment ſhall be committed as aforeſaid, ſhall or may be found on the premiſes belonging to the owner or proprietor of ſuch eſtate, or to any tenant thereof taxed as aforeſaid, ſhall be liable to be taken and diſpoſed of by public auction, in manner as is provided by law, in caſe of diſtreſs taken for taxes in diſcharge in part or in whole of any ſum or ſums aſſeſſed, upon any ſuch perſon or perſons as aforeſaid. When perſons are taxed for real eſtate in their poſſeſſion, and are not owners; duty of Collectors in ſuch caſe.

XXV. *And be it further enacted*, That if any ſtock or produce which may be taken and diſpoſed of as aforeſaid, ſhall be the property of the proprietor or owner of the land aſſeſſed as aforeſaid, in every ſuch caſe, ſuch perſon or perſons aſſeſſed as aforeſaid, ſhall be held

held to make full ſatisfaction to the owner or proprietor of ſuch ſtock, or produce, and the Collector making diſtreſs ſhall not be chargeable with the ſame.

Proviſo, when perſons are aſſeſſed for eſtates in their poſſeſſion, and are not owners.

Provided always, That if the perſon or perſons aſſeſſed as aforeſaid, ſhall remain on ſuch eſtate, or in the town, diſtrict, pariſh, precinct or plantation, where the ſame may lay, for the ſpace of nine months next after the rate bill ſhall be committed to any ſuch Collector as aforeſaid, the ſaid Collector ſhall have no other remedy than againſt the perſon or property of the perſon or perſons aſſeſſed as aforeſaid, unleſs it ſhall appear, that there was no ſufficient diſtreſs to be found upon the premiſes within that time, and that ſuch Collector was unable to collect the ſum or ſums due from the perſon or perſons aſſeſſed as aforeſaid within the like term ; in which caſe it ſhall and may be lawful for ſuch Collector or Collectors to proceed to ſell ſo much of ſaid real eſtate as may be neceſſary to diſcharge the ſaid aſſeſſment and charges, in the ſame manner as is herein after provided for the ſale of lands belonging to non-reſident proprietors for the non-payment of taxes. *Provided* ſuch ſale ſhall be made within the term of one year from the time ſuch tax ſhall be committed to ſuch Collector or Collectors, and not afterwards.

Precincts & pariſhes empowered to chooſe collectors, annually

XXVI. *And be it further enacted*, That it ſhall be in the power of any precinct or pariſh within this Commonwealth, ſome time in the month of *March* annually, at the time they chooſe other precinct or pariſh officers, to chooſe one or more perſon or perſons to ſerve as Collector or Collectors of all ſuch rates or aſſeſſments as ſhall be granted or agreed upon by ſuch precinct or pariſh, who ſhall be duly ſworn to the faithful diſcharge of the truſt repoſed in him or them ; and any perſon that ſhall be choſen into the office of a Collector as aforeſaid, and ſhall refuſe to accept thereof, or deny or neglect to take the oath by law required, ſhall forfeit and pay unto the Treaſurer of ſuch precinct or pariſh, for the uſe of ſuch precinct or pariſh, the ſum of *five pounds*, to be ſued for and recovered in the ſame manner fines are recovered from perſons refuſing to ſerve in the office of a Conſtable in any town or diſtrict ; *Provided* no perſon in commiſſion for any office, civil or military, church officer, or member of the Council, Senate, or Houſe of Repreſentatives, Selectmen, Town-Clerk, Town-Treaſurer, or Aſſeſſors for the time being, nor any other perſon, that has ſerved as Conſtable or Collector for himſelf or his own turn, within the ſpace of ſeven years, ſhall be obliged to ſerve in the office of Collector.

Penalty for refuſing to ſerve.

Proviſo.

Form of the oath to be adminiſtered to conſtables.

XXVII. *Be it further enacted*, That the oath to be adminiſtered to the Conſtable in any town or diſtrict, ſhall be in the form following :

WHEREAS you *A. B.* are choſen Conſtable within the town of *C.* for one year now following, and until other be choſen and ſworn in your place, do ſwear, that you will carefully intend the preſervation of the peace, the diſcovery and preventing all attempts againſt the ſame ; that you will duly execute all warrants, which ſhall be ſent unto you from lawful authority, and faithfully attend all ſuch directions in the laws, and orders of Court, as are or ſhall be

be committed to your care; that you will faithfully and with what ſpeed you can, collect and levy all ſuch fines, diſtreſſes, rates, aſſeſſments and ſums of money, for which you ſhall have ſufficient warrants according to law, rendering an account thereof, and paying the ſame according to the direction in your warrant; and with like faithfulneſs, ſpeed, and diligence, you will ſerve all writs, executions, and diſtreſſes, in private cauſes, betwixt party and party, and make return thereof duly in the ſame Court where they are returnable; and in all theſe things, you ſhall deal faithfully, whilſt you ſhall be in office, without any ſiniſter reſpects of favour or diſpleaſure.

So help you GOD.

And the oath to ſuch as may be Collectors only, ſhall be in the following form.

YOU *A. B.* being appointed a Collector of taxes within the of for one year next following, do ſwear, that you will levy and collect, with what ſpeed you can, all ſuch rates and aſſeſſments for which you ſhall have ſufficient warrants, according to law: rendering an account thereof, and paying the ſame, according to the direction in your warrant. Form of the oath to be adminiſtered to collectors.

So help you GOD.

XXVIII. *And be it further enacted*, That in caſe of diſtreſs or commitment for the non-payment of taxes, the officer concerned therein, ſhall be entitled to the ſame fees, which Sheriffs by law are or may be entitled to for levying executions, ſaving that the travel in caſe of diſtreſs ſhall be computed only from the dwelling-houſe of the officer making ſuch diſtreſs to the place where the diſtreſs may be made. Fees in caſes of commitment for non payment of taxes.

[This act paſſed *March* 16, 1786.]

An Act in Addition to an Act paſſed *March* the Sixteenth, in the Year of our Lord One Thouſand ſeven Hundred and Eighty-ſix, entitled, "An Act for the Choice and Appointment of Collectors of Rates and Taxes, and for aſcertaining their Power and Duty."

WHEREAS it often happens that perſons taxed in public and other aſſeſſments abſcond, not having paid their rates and taxes, by which means the ſaid taxes are frequently loſt, and no proviſion being made in the ſaid act for remedy thereof: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That when any perſon duly taxed in any aſſeſſment as aforeſaid, hath abſconded Enacting clauſe.

ſconded or ſhall hereafter abſcond, not having paid their rates and taxes, and hath concealed or ſhall conceal his goods and eſtates, in every ſuch caſe the Collectors and Conſtables to whom the ſaid rates and taxes are committed to collect, ſhall have like remedy againſt their agents, factors or truſtees, for the recovery of the ſame, as by the law of this Commonwealth, other creditors have for the recovery of their debts.

[This act paſſed *March* 26, 1788.]

An Act more effectually to enable Conſtables and Collectors of Taxes to collect Aſſeſſments in certain Caſes.

Preamble.

WHEREAS towns, diſtricts and plantations, in certain inſtances, are by law authorized to aſſeſs the inhabitants adjacent to ſuch towns, diſtricts and plantations, their proportion of the public taxes. And whereas doubts have ariſen and may hereafter ariſe, whether Conſtables and Collectors are by law authorized to command aſſiſtance when out of the limits of their reſpective towns: Therefore,

Conſtables and Collectors having any liſt of aſſeſſment.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That when and ſo often as any Conſtable or Collector of public taxes, ſhall have any liſt of aſſeſſment to him committed, in which liſt ſhall be named and legally aſſeſſed, in any ſum or ſums, any perſon or perſons not inhabitants of the town, diſtrict or plantation to which ſuch Conſtable or Collector belongs, in every ſuch caſe it ſhall and may be lawful for any ſuch Conſtable or Collector to require and command any perſon or perſons within the limits of their reſpective towns, diſtricts or plantations, to aſſiſt ſuch Conſtable or Collector, in the collection of the taxes aſſeſſed as aforeſaid, on any of the inhabitants of any ſuch adjacent lands, and ſuch Conſtable or Collector may and hereby is alſo fully authorized to require and command any of the inhabitants of the aforeſaid lands adjacent, to aſſiſt him in collecting any ſuch aſſeſſment as aforeſaid.

In ſuch caſes.

Perſons refuſing to aſſiſt Conſtables or Collectors.

Penalty.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon or perſons when thereto required, ſhall refuſe or neglect to aid and aſſiſt any Conſtable or Collector requiring ſuch aid, he or they ſo refuſing or neglecting, ſhall be, and hereby are made liable to, and ſhall pay the ſame penalties, to be recovered and diſpoſed of in the ſame manner as by law is provided in caſe of refuſing to aſſiſt Conſtables or Collectors when thereto required, within the limits of their reſpective towns.

[This act paſſed *March* 20, 1783.]

An

An Act to provide for the Collection of Taxes in Cases where the Conſtables or Collectors appointed for that Purpoſe, have removed or may remove themſelves out of this Commonwealth.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That where any Conſtable or Collector in any town, precinct or pariſh, within this Commonwealth, ſhall have had any rates or aſſeſſments committed to him to collect, and has removed, or in the judgment of the Selectmen, Aſſeſſors, or Treaſurer of the ſaid town, or the Committee or Treaſurer of the precinct or pariſh (as the caſe may be) is about to remove out of this Commonwealth, before the time ſet in his warrant or warrants to make payment to the ſeveral Treaſurers therein mentioned, or the time of payment be elapſed, and the Treaſurer or Treaſurers has thereupon iſſued his or their warrant or warrants of diſtreſs, that in either caſe it ſhall and may be lawful for the Selectmen of ſuch town, or Committee of ſuch precinct or pariſh, on their own motion, or at the requeſt of their reſpective Aſſeſſors or Treaſurers, to call a town, precinct or pariſh meeting, in due form of law, ſetting forth in their warrant the cauſe of ſuch meeting, and requiring the voters qualified by law at the ſaid meeting, if the ſaid voters ſhall think it proper, either by themſelves or ſuch perſon or perſons as they ſhall appoint, to ſettle with the ſaid Conſtable or Collector who is under either of the abovementioned circumſtances, and who has or is about to remove as aforeſaid, for the money he has received on the rate bill or bills that has been delivered to him, and demand and receive his ſaid bill or bills, and give him a diſcharge therefor; and at the ſaid meeting may proceed to the choice of another Conſtable or Collector, who upon non-acceptance ſhall be liable to the ſame fine as if he had been originally choſen in the month of *March*, and the town, pariſh or precinct, ſhall proceed to a new choice, and ſo *toties quoties*, until one is choſen who ſhall accept, and be ſworn accordingly; and the Aſſeſſors ſhall make out a new warrant under their hands and ſeals, in due form of law, and ſhall deliver the warrant, together with the ſame bill or bills, to the perſon choſen as aforeſaid, to collect and levy what ſhall be remaining due thereon; and the perſon ſo choſen is hereby veſted with the ſame authority to levy and collect what ſhall then remain due on the ſame bill or bills, as the Conſtable or the Collector was to whom they were firſt committed.

Where Conſtables or Collectors have had rates committed to them, & have removed, or are about to remove; in either caſe the Selectmen or Committees are to call a meeting, ſetting forth the cauſe.

Perſons to be choſen to ſettle with Conſtables or Collectors who are under the above circumſtances.

To chuſe another Conſtable or Collector.

Aſſeſſors to make out a new warrant.

II. *And be it further enacted by the authority aforeſaid,* That if any Conſtable or Collector ſo removing or intending to remove himſelf out of this Commonwealth, ſhall refuſe to deliver the bill or bills of rates or aſſeſſments committed to him to collect, and all monies collected by him thereon, and remaining in his hands, when demanded by the Aſſeſſors or Selectmen, or the major part of them as aforeſaid, to deliver the ſame, he ſhall pay a fine of *ſixty pounds*, to the uſe of the town, precinct or pariſh of which he was Conſtable

In caſe of refuſal.

ble or Collector, to be recovered by such town precinct or parish, in any action of debt, to be brought in any Court of law proper to try the same, and shall remain liable to pay what shall remain due upon the bill or bills committed to him to collect, as by the law of this Commonwealth is already provided.

[This act passed *July* 5, 1783.]

An Act for enforcing the speedy Payment of Rates and Taxes, and directing the Process against deficient Constables and Collectors.

BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the Treasurer and Receiver-General shall send such warrants as he shall from time to time be ordered to issue, for the assessing any rate or tax, enclosed to the Sheriff of each respective county, who is required immediately to dispose of and transmit the same unto the Assessors of the several towns, districts and plantations within such county, according to the directions thereof; for disposing of which, he shall have a reasonable allowance ordered him by the Court of Sessions of the same county, to be paid out of the county treasury, upon his laying the account thereof before the said Court.

Treasurer to send his warrants enclosed to Sheriffs.

Sheriffs to transmit them to Assessors; and to have allowance therefor.

II. *Provided always, and it hereby is enacted,* That no allowance shall be made to any Sheriff for transmitting any such warrants, unless he shall produce a certificate from one of the Assessors, or the Clerk of each town, district or plantation, in the county to which such Sheriff belongs, or other satisfactory evidence of their having respectively received such warrant as aforesaid.

Proviso.

III. *And be it further enacted,* That if the Treasurer of this Commonwealth, for the time being, shall not receive a certificate of the assessment of any tax from the Assessors of any town, district or plantation, within sixty days from the time appointed in the warrant for certifying the same, the Treasurer of the Commonwealth, for the time being, shall send a certificate of such deficiency to the Clerk of the Court of General Sessions of the Peace, for the county whereto the deficient town or district belongs, who shall lay the same before the said Court of Sessions at their next sitting, whereupon the said Court shall forthwith proceed to appoint Assessors to assess and apportion the rates and assessments granted as aforesaid; and if any person appointed an Assessor as aforesaid by the Court of Sessions, shall refuse to serve, he shall forfeit the sum of *six pounds* to the use of this Commonwealth, to be recovered by complaint in the same Court, by such person as the said Court may appoint to be agent or attorney in behalf of the Commonwealth for that purpose, who shall forthwith pay the same to the Treasurer of the Commonwealth; and after such refusal the said Court of Sessions shall, as soon as may be, proceed to appoint other Assessors.

Treasurer to send a certificate of any deficiency in towns, to the Clerk of the Court of Sessions.

Court of Sessions to appoint Assessors.

Forfeiture for refusing to serve.

IV.

IV. *And be it further enacted*, That if any Conſtable or Collector to whom any tax or aſſeſſment ſhall be committed to collect, ſhall be remiſs and negligent of his duty in not levying and paying unto the Treaſurer and Receiver-General ſuch ſum and ſums of money as he ſhall from time to time have received, and as ought by him to have been paid within the reſpective times ſet and limited by the Aſſeſſors warrant, purſuant to law, the Treaſurer and Receiver-General is hereby empowered, after the expiration of the time ſo ſet, by warrant under his hand and ſeal, directed to the Sheriff, or his deputy, to cauſe ſuch ſum and ſums of money to be levied by diſtreſs and ſale of ſuch deficient Conſtable or Collector's eſtate, real and perſonal, returning the overplus, if any there be; and for want of ſuch eſtate, to take the body of ſuch Conſtable or Collector, and to impriſon him until he ſhall pay the ſame; which warrant the Sheriff, or his deputy, is hereby empowered and required to execute accordingly.

If Conſtables or Collectors are remiſs in their duty, Treaſurer to iſſue a warrant of diſtreſs.

V. *And be it further enacted*, That if any Conſtable or Collector ſo failing as aforeſaid have no eſtate to be found, whereon to make diſtreſs, and his perſon cannot be taken within the ſpace of three months from the time a warrant of diſtreſs ſhall iſſue from the Treaſurer and Receiver-General as aforeſaid, or being taken and committed to goal ſhall not within three months ſatisfy the ſame, in ſuch caſe, the town, diſtrict or plantation, whoſe Conſtable or Collector ſo fails of his duty, ſhall, within three months from the expiration of the ſaid three months firſt mentioned, make good to the treaſury the ſum, or ſums due or owing to the ſame, from ſuch deficient Conſtable or Collector; and the Aſſeſſors of ſuch town, diſtrict or plantation having notice in writing from the Treaſurer of the failure of any Conſtable or Collector as aforeſaid, ſhall forthwith thereupon, without any other or further warrant, aſſeſs the ſum the ſaid deficient Conſtable or Collector is deficient, upon the inhabitants and eſtates of ſuch town, diſtrict or plantation, in manner as the ſum ſo committed to ſuch deficient Conſtable or Collector was aſſeſſed, and commit the ſame to ſome other Conſtable or Collector, with warrant to collect, and in default thereof the Treaſurer of this Commonwealth is directed and empowered, to iſſue a warrant of diſtreſs againſt ſuch deficient Aſſeſſors for the whole ſum which may remain due from ſuch deficient Conſtable or Collector, which ſhall be executed in the ſame manner as is preſcribed in this act for ſerving other warrants of diſtreſs, which may be iſſued by ſuch Treaſurer. *Provided always*, That ſuch Conſtable or Collector failing of his duty as aforeſaid, for whoſe default the town, diſtrict or plantation is anſwerable, as before expreſſed, ſhall at all times afterwards, be liable to the action or ſuit of the inhabitants, in their corporate capacity, for all ſuch ſum and ſums as were aſſeſſed upon the ſame through his defect, and for other damages occuring to them thereby. And in caſe of the deceaſe of any Conſtable or Collector in any town, diſtrict, plantation, precinct or pariſh, before his having adjuſted the accounts of

If they have no eſtate to be found —towns are to make good the deficiency.

Aſſeſſors of ſuch towns to aſſeſs the deficiency, and commit the ſame to ſome other Conſtable or Collector.

In caſe of default in Aſſeſſors, the Treaſurer to iſſue a warrant of diſtreſs.

Proviſo.

his aſſeſſment to him committed to collect, for ſuch town, diſtrict, plantation, pariſh or precinct, the executors or adminiſtrators of ſuch Conſtable or Collector, ſhall, within two months after his deceaſe, ſettle and make up accounts with the Aſſeſſors of the ſaid town, diſtrict or plantation, precinct or pariſh, of ſuch part of the aſſeſſment as was received and collected by the deceaſed Conſtable or Collector, in his life time, with which ſuch executors or adminiſtrators, ſhall be chargeable, in like manner as the deceaſed Conſtable or Collector ſhould be if living; and ſuch Aſſeſſors ſhall thereupon procure and appoint in writing ſome ſuitable perſon, a Collector to perfect ſuch collection; and the perſon ſo appointed, is accordingly hereby empowered and required to execute all ſuch powers as were granted to the deceaſed Conſtable or Collector: And if the executors or adminiſtrators of any Conſtable or Collector ſo deceaſed, not having fully collected the aſſeſſment committed, ſhall fail of making up and ſettling the account of what was received by the deceaſed as aforeſaid, before the expiration of the time aforeſaid, ſuch executors or adminiſtrators ſhall be chargeable with the whole ſum committed to their teſtator or inteſtate, in caſe there be ſufficient aſſets, in the ſame manner the deceaſed Conſtable or Collector ſhould be if living.

In caſe of the deceaſe of any Conſtable or Collector before his accounts are adjuſted, what proceedings ſhall be had.

Aſſeſſors to appoint a Collector to perfect the collection.

VI. *And be it further enacted*, That if the Conſtable or Collector of any town, diſtrict, plantation, precinct or pariſh, within this Commonwealth, to whom any county, town, diſtrict, plantation, precinct or pariſh rates or aſſeſſments ſhall have been committed to collect, ſhall be remiſs in his duty, by neglecting to collect and pay in the ſame to the Treaſurer or Receiver of ſuch county, town, diſtrict, plantation, precinct or pariſh, by the time fixed in the warrant to him directed, ſuch Treaſurer or Receiver, is hereby empowered to iſſue his warrant, returnable in ninety days, under his hand and ſeal, directed to the Sheriff of the county, or his deputy (who are hereby reſpectively directed and empowered to execute the ſame) to cauſe ſuch ſum or ſums of money as ſuch Conſtable or Collector hath not paid in, to be levied by diſtreſs and ſale of his eſtate real or perſonal, returning the overplus, if any there be; and for want of ſuch eſtate, to take the body of ſuch Conſtable or Collector, and him impriſon until he pay the ſame; and the warrant ſhall be in ſubſtance as follows:

If Conſtables or Collectors of any town taxes, &c. are remiſs in their duty, the receiver of ſuch taxes empowered to iſſue his warrant of diſtreſs.

L. S. ——— ſſ. *A. B.* Treaſurer of the —— of —— in the ſaid county:
To the Sheriff of the county of ——— or his Deputy, GREETING.

Form of the Warrant.

WHEREAS *C. D.* of aforeſaid [*addition*] on the—— day of being a of rates and taxes granted and agreed on by the aforeſaid, had a liſt of aſſeſſments, duly made by the aſſeſſors of the aforeſaid, amounting to the ſum of —— committed to him, with a warrant under their hands and ſeals, directing and empowering him to collect the ſeveral ſums in the ſaid aſſeſſment

aſſeſſment mentioned, and pay the ſame to the Treaſurer of ——— aforeſaid, by the day of but the ſaid *C. D.* hath been remiſs in his duty, by law required, and hath neglected to collect the ſeveral ſums aforeſaid, and pay the ſame to the Treaſurer of the aforeſaid; and there ſtill remains due thereof the ſum of and the ſaid *C. D.* ſtill neglects to pay the ſame. You are hereby, in the name of the Commonwealth of *Maſſachuſetts*, required forthwith to levy the aforeſaid ſum of by diſtreſs and ſale of the eſtate, real or perſonal, of the ſaid *C. D.* and pay the ſame unto the Treaſurer of the ſaid returning the overplus, if any there be, to the ſaid *C. D.* and for want of ſuch eſtate to take the body of the ſaid *C. D.* and him commit to the goal in the county aforeſaid, there to remain until he has paid the ſum of ——— with *two ſhillings* for this warrant, together with your fees, or that he be otherwiſe therefrom diſcharged by order of law; and make return of this warrant to myſelf or my ſucceſſor, as Treaſurer of the ſaid within ninety days from this time, with your doings therein.

Given under my hand and ſeal, this day of in the year of our Lord, one thouſand ſeven hundred and —.

VII. *And it is further enacted*, That all executions or warrants of diſtreſs, that have been, or may hereafter be iſſued by the Treaſurer and Receiver-General, or by the Treaſurer of any county, town, diſtrict, plantation, precinct or pariſh, againſt any Conſtable or Collector, which hath been, or may be hereafter delivered to the Sheriff of any county within this Commonwealth or his deputy, ſuch Sheriff or deputy ſhall make return of his doings thereon unto the Treaſurer who iſſued the ſame execution or warrant of diſtreſs, within a reaſonable time after the return day, in the ſame mentioned, with the money, if any, that he hath received and collected by virtue thereof; and where the ſame ſhall neceſſarily be returned unſatisfied, or ſatisfied in part only, ſuch Treaſurer may iſſue an *alias* for ſuch ſum as may remain due on the return of the firſt; and ſo *toties quoties*; which reaſonable time after the return day ſhall be computed at the rate of forty-eight hours, for every ten miles diſtance, from the dwelling houſe of the Sheriff or his deputy, to the place where the warrant may be returnable; and any Sheriff or Deputy Sheriff, that ſhall make default in accounting for, and paying in the monies he may have collected and received of any deficient Conſtable or Collector, by execution or warrant of diſtreſs as aforeſaid, or in making return of his doings within reaſonable time as aforeſaid, ſhall be liable to pay the whole ſum in ſuch execution or warrant of diſtreſs mentioned; and the Treaſurer and Receiver-General of this Commonwealth, and the Treaſurers of the counties, towns, diſtricts, precincts and pariſhes reſpectively, are hereby authorized and empowered to make out their warrants reſpectively, directed to the Coroner of ſuch county, where any Sheriff or his deputy is deficient as aforeſaid, requiring them reſpectively as aforeſaid, to diſtrain for the ſame, upon the eſtate real or perſonal,

Sheriffs to make return of their doings.

When warrants are returned unſatisfied, Treaſurer to iſſue an *alias*.

Sheriffs making default, ſhall be liable to pay the whole ſum.

perſonal, of ſuch deficient Sheriff or his deputy, as is before directed herein, with reſpect to the Sheriff or his deputy making diſtreſs upon the eſtate of deficient Conſtables or Collectors; which warrant, the Coroner of any county reſpectively is hereby empowered and required to execute.

When warrants of diſtreſs are levied on lands, &c. of deficient Conſtables, Sheriffs or deputies, ſale thereof to be at publick vendue.

VIII. *And be it further enacted*, That when any execution or warrant of diſtreſs iſſued by the Treaſurer of the State, or Treaſurer of any county, town, diſtrict, plantation, precinct or pariſh, to the Sheriff or his deputy, or to the Coroner, ſhall be levied on the lands, tenements, or hereditaments of any deficient Conſtable, Sheriff or deputy, in every ſuch caſe, the officer executing ſuch warrant of diſtreſs, ſhall make ſale thereof at publick vendue, to the higheſt bidder, and execute a good deed or deeds of bargain and ſale thereof, to the purchaſer, having firſt given notice of the time and place of ſale, by poſting up advertiſements, at leaſt fourteen days previous thereto, in two or more publick places in the town or place where ſuch lands or tenements lie, as alſo in the two adjacent towns; and all deeds and conveyances of any ſuch lands or tenements duly executed as aforeſaid, ſhall be good and effectual in law unto the purchaſer, his heirs and aſſigns forever, to all intents and purpoſes, as though executed by the deficient Conſtable, Sheriff or deputy; and in caſe the produce of ſuch lands and tenements, ſhall not ſatisfy the ſum or ſums, mentioned in the ſaid warrant or warrants of diſtreſs, together with reaſonable charges ariſing thereon, then the Treaſurer iſſuing ſuch warrant, ſhall iſſue an *alias* execution or warrant of diſtreſs for ſuch remaining ſum or ſums, and the officer executing the ſame, for want of eſtate, ſhall take the body of ſuch deficient Conſtable, Collector or Deputy-Sheriff, and him commit unto the common goal of the county whereto he belongs, until he ſhall pay the ſame.

In caſe the produce ſhall not ſatisfy the ſums, an *alias* execution ſhall be iſſued.

Proviſo,

Provided always, That when any Conſtable, Collector, or Deputy-Sheriff, ſhall be committed to goal for default in payment of any taxes committed to him to collect, ſuch Conſtable, Collector, or Deputy-Sheriff, ſhall be admitted to the liberty of the goal yard, they procuring ſufficient bonds in the ſame manner as by law is preſcribed for other dedtors.

Further proviſo.

IX. *Provided always, and be it further enacted*, That in no caſe whatever, any diſtreſs ſhall be made or taken from any perſon, of his arms or houſehold utenſils, neceſſary for upholding life; nor of tools or implements neceſſary for his trade or occupation, beaſts of the plough neceſſary for the cultivation of his improved land; nor of beding or apparel neceſſary for him and his family, any law, uſage, or cuſtom to the contrary notwithſtanding.

When taxes are laid on plantations not incorporated, directions in thiscaſe.

X. *And be it further enacted*, That when any part or proportion of any State or county tax, ſhall be laid on any plantation, not incorporated, the Treaſurer of the State, or of ſuch county reſpectively, ſhall iſſue his precept to ſome Juſtice of the Peace, dwelling near to ſuch plantation, requiring him forthwith to grant his warrant, directed to ſome principal inhabitant of ſuch plantation, requiring him to notify and warn the inhabitants of ſuch plantation, being freeholders,

holders, to meet at ſuch time and place within the ſame, as in ſuch warrant ſhall be ſpecified, in order to chooſe needful officers for the purpoſes hereafter mentioned, and ſuch principal inhabitant is hereby obliged to obſerve and obey the warrant that he ſhall receive from ſuch Juſtice, on the penalty of forfeiting and paying the whole ſum that ſhall be ordered to be levied on ſuch plantation, to be recovered by action of debt by ſaid reſpective Treaſurers, in any Court of record within this Commonwealth proper to try the ſame. And ſuch principal inhabitant ſhall make return of the Juſtice's warrant, to the Juſtice who iſſued it, with his doings therein, and the doings of the plantation in conſequence of it, within the time limited in ſuch warrant; and the Juſtice ſhall thereupon certify ſuch doings to the State or County Treaſurer reſpectively: And ſuch of ſaid inhabitants as ſhall then aſſemble, ſhall have power, and they are hereby required to chooſe a Moderator and Clerk, as alſo Aſſeſſors and Collectors for aſſeſſing and collecting ſuch plantation's proportion of ſuch State and county tax as ſhall be ordered to be aſſeſſed, to be duly paid when collected by ſuch Collectors, to the State or County Treaſurer's reſpectively; and ſuch Clerk, Aſſeſſors and Collectors ſhall be under oath, to be adminiſtered by the Moderator of ſuch meeting, for the faithful diſcharge of their reſpective truſts, and ſhall have the ſame allowance from ſuch plantations, as ſuch officers are entitled unto by law in towns corporate.

Inhabitants empowered and required to chooſe Aſſeſſors and Collectors.

XI. *And be it further enacted*, That the Aſſeſſors ſo choſen and ſworn, ſhall thereupon take a liſt of the rateable polls, and a valuation of the eſtates and faculties of the inhabitants of ſuch plantation for a rule by which to make ſuch aſſeſſment, and by which to judge of the qualification of voters in meetings of the ſaid inhabitants thereafter to be holden, until another valuation ſhall be made.

Such Aſſeſſors duty.

XII. *And be it further enacted*, That the Aſſeſſors who ſhall from time to time be choſen or appointed for ſuch plantation, ſhall have power, and they are required to iſſue their warrants for calling meetings of the inhabitants there, in the month of *March* annually, for chooſing ſuch officers as aforeſaid, who ſhall be ſworn by the Moderator or ſome Juſtice of the Peace as aforeſaid.

Aſſeſſors of ſuch plantations to call a meeting of the inhabitants, annually in *March*.

XIII. *And be it further enacted*, That every Moderator of a plantation meeting, ſhall be held and obliged to notify the plantation officers to appear either before himſelf or ſome Juſtice of the Peace, within ſeven days from the time of their being choſen, and take the neceſſary oaths, and in caſe of neglect, ſhall forfeit and pay the ſum of *three pounds* for the uſe of the plantation, to be recovered by any inhabitant thereof, before any Juſtice of the Peace within the ſame county.

In what manner officers of plantations ſhall be ſworn.

XIV. *And be it further enacted*, That whenever a Conſtable or Collector of any town, diſtrict, plantation, pariſh or precinct, ſhall be taken on execution by virtue of this act, it ſhall be lawful for the Aſſeſſors of ſuch town, diſtrict, plantation, pariſh or precinct for the time being, if they ſee fit, to demand and receive of the Conſtable or Collector, taken as aforeſaid, a true copy of any or all the aſſeſſments which as Conſtable or Collector aforeſaid he had in his hands

When Conſtables or Collectors are taken on execution, Aſſeſſors may demand a copy of the aſſeſſments unſettled.

unſettled, at the time of being taken as aforeſaid, with the whole evidence of all payments on the aſſeſſments demanded as aforeſaid; and in caſe the ſaid Conſtable or Collector taken as aforeſaid, ſhall upon being demanded thereto deliver up to the ſaid Aſſeſſors, all the aſſeſſments which he as Conſtable or Collector as aforeſaid, ſhall have in his hands unſettled, together with the whole evidence of all payments on the aſſeſſments demanded as aforeſaid, then the ſaid Conſtable or Collector ſhall receive ſuch credit as the ſaid Aſſeſſors, from an inſpection of his aſſeſſments, ſhall adjudge him entitled to; and the ſaid Collector or Conſtable taken as aforeſaid, ſhall be holden for the payment for ſuch ſum or ſums of money as he ſhall be found deficient, after being credited as aforeſaid; and the ſame town, diſtrict, plantation, pariſh or precinct, may proceed to the choice of another Collector at any other time beſides the annual meeting in *March*, to finiſh the collections on the ſame aſſeſſments, who ſhall be ſworn to the faithful diſcharge of his office; or if he ſhall refuſe or neglect to accept the ſaid office, or refuſe to be ſworn as aforeſaid, he ſhall incur the penalty which Conſtables by law will incur for refuſing or neglecting to be ſworn or ſerve in the office of a Conſtable; and the Aſſeſſors for the time being reſpectively, on receiving the aſſeſſment as aforeſaid, ſhall make and deliver to the ſame Collector, choſen and ſworn as aforeſaid, a warrant or warrants for finiſhing the collections laſt aforeſaid, in the form by law preſcribed, *(mutatis mutandis)* and the ſame Collector ſhall proceed to finiſh ſuch collections in the ſame manner as Conſtables or other Collectors are to proceed in collecting like ſpecies of rates or taxes; and if any Conſtable or Collector taken as aforeſaid, ſhall, on demand as aforeſaid, refuſe to exhibit and deliver up his aſſeſſments with the evidence as aforeſaid, he ſhall be forthwith, either by the officer taking him as aforeſaid, or by warrant from ſome Juſtice of the Peace, committed to the common goal of the county, there to remain until he ſhall exhibit the ſame for the purpoſe aforeſaid: And the Aſſeſſors of ſuch town, diſtrict, plantation, pariſh or precinct, are hereby empowered to take the duplicate, or copies of the records of ſuch aſſeſſments, if the ſame are recorded, and the ſame copies to deliver to the Collector, choſen as laſt aforeſaid, who having received the ſame, and a warrant therefor, ſhall proceed to finiſh the collection of the rates and taxes in the ſame aſſeſſments mentioned, of the perſons who did not pay the ſame to the Conſtable or Collector, taken as aforeſaid.

Such Collectors or Conſtables to be accountable for the deficiency.

Towns, &c may proceed to the choice of another Collector.

Penalty for refuſing to accept.

If any Collector taken on execution refuſe to deliver up his aſſeſſments, he ſhall be committed to goal.

Provided always, That the Collectors choſen to finiſh the collections aforeſaid, on averment of payment by the perſon or perſons aſſeſſed, to the Conſtable or Collector taken as aforeſaid, and denial of payment to the Collector for finiſhing the ſaid collections, ſhall not proceed to diſtrain or impriſon any perſon, unleſs a vote of ſuch town, diſtrict, plantation, pariſh or precinct, is firſt had therefor, and certified to the ſame Collector by the Clerk of ſuch town, diſtrict, plantation, pariſh or precinct.

Proviſo.

XV. *And be it further enacted*, That if any Conſtable or Collector of any town, diſtrict, plantation, pariſh or precinct, ſhall abſcond

ſcond or ſecret himſelf for the ſpace of one month, having aſſeſſments in his hands unſettled, the Selectmen or Aſſeſſors of ſuch town, diſtrict, plantation, pariſh or precinct, are hereby empowered to charge ſuch Conſtable therewith, by declaration filed in the Supreme Judicial Court, and thereupon to proceed to judgment of outlawry againſt ſuch Conſtable or Collector; and the ſame town, diſtrict, plantation, pariſh or precinct, are hereby empowered to chooſe a new Collector to finiſh the collections which ſuch abſconding Conſtable or Collector ſhould have finiſhed and compleated; and the ſame collections may be finiſhed in the ſame manner as is provided for finiſhing collections, where the Conſtable or Collector is taken on execution, and refuſes to exhibit or ſhow his aſſeſſment as aforeſaid; the ſaid Selectmen, Aſſeſſors and Collector obſerving the rules and directions therein expreſſed.

If Conſtables or Collectors abſcond, judgment of outlawry to proceed.

Provided always, That if ſuch Conſtable or Collector, during the aforeſaid proceſs of outlawry, ſhall ſurrender himſelf and confeſs the aforeſaid charge, or ſettle the aſſeſſments, and pay the rates and taxes in his hands as aforeſaid, no further proceſs ſhall be had againſt him, except judgment for coſts, which he ſhall be holden to pay.

Proviſo.

Provided alſo, That if after judgment of outlawry rendered againſt him, ſuch Conſtable or Collector ſhall ſurrender himſelf, and ſettle the ſame aſſeſſments, and pay the rates and taxes, and all coſts of the proceſs laſt aforeſaid; and if the ſame ſettlement, payment and ſatisfaction, ſhall be recorded in the Supreme Judicial Court, ſuch record ſhall be conſtrued to operate and be a full and effectual reverſal of the aforeſaid judgment of outlawry; and ſuch town, diſtrict, plantation, pariſh or precinct, ſhall have all other remedies againſt ſuch Conſtable or Collector, as they would have been entitled to, had no ſuch proceſs of outlawry ever been commenced.

Proviſo.

[This act paſſed *February* 16, 1786.]

An Act to enable the Inhabitants of the ſeveral Towns and Plantations within this Commonwealth, to aſcertain, from Time to Time, the Amount of Monies received by their reſpective Collectors of publick Taxes, and what Payments they have made to the Treaſurer of the Commonwealth.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That the ſeveral Collectors of publick taxes ſhall, once every two months at leaſt, exhibit to the Selectmen, and where there are no Selectmen, to the Aſſeſſors of the reſpective towns or plantations to which they belong, a juſt and true account of all the monies they have received on the ſeveral taxes committed to them, and produce the Treaſurer's receipts for all the monies by them reſpectively paid into the treaſury.

Collectors to exhibit to the Selectmen, once in two months, an account of monies received, &c.

II.

Collectors neglecting. Penalty.

II. *And be it further enacted by the authority aforeſaid*, That if any Collector of publick taxes, ſhall neglect to exhibit his accounts in manner aforeſaid, he ſhall forfeit and pay for every neglect, the ſum of *two and a half per cent.* on the ſum or ſums committed to him to collect, to the uſe of the town or plantation of which he is or has been a Collector, to be recovered by ſuch town or plantation in any Court of law proper to try the ſame.

When the time fixed by law for collecting any tax is expired, Treaſurer to iſſue execution.

III. *And be it further enacted by the authority aforeſaid*, That whenever the time fixed by law for collecting any tax ſhall have expired, the Treaſurer of this Commonwealth, ſhall, and he is hereby authorized and empowered, at the requeſt of the Selectmen or Aſſeſſors of any town or plantation, to iſſue his execution againſt any Collector or Collectors of their reſpective towns or plantations, without any further order from the General Court; any law or reſolve to the contrary notwithſtanding.

[This act paſſed *March* 23, 1784.]

An Act directing the Manner in which Money ſhall be raiſed and levied to defray the Charges which may ariſe within the ſeveral Counties in this Commonwealth.

Preamble.

WHEREAS by the Conſtitution of this Commomwealth, it is among other things eſtabliſhed, that "no ſubſidy, charge, tax, impoſt, or duty, ought to be eſtabliſhed, fixed, laid or levied, under any pretext whatſoever, without the conſent of the people or their Repreſentatives in the Legiſlature," ſo that it is become neceſſary to make other proviſion than has been uſual for defraying county charges:

Juſtices of the Court of General Seſſions of the Peace in the ſeveral counties to make eſtimates, &c.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the Juſtices of the Court of General Seſſions of the Peace, at the firſt Court which ſhall be held within each of the counties of this Commonwealth, next preceding the firſt day of *January* annually, ſhall make an eſtimate of ſuch ſum or ſums of money as they, according to their beſt ſkill and judgment, ſhall think ſufficient to defray the neceſſary charges of their reſpective counties for one year, ſpecifying as nearly as may be, the purpoſes for which ſuch ſum or ſums may be neceſſary, and which have been uſually conſidered as county charges; which eſtimate the Clerks of ſaid Court are hereby directed to lay before the General Court from time to time, at their next ſeſſion after ſuch eſtimate ſhall be formed, ſo that ſuch ſum as may be neceſſary for diſcharging the county charges of the ſeveral counties of this Commonwealth, may be regularly laid on the inhabitants of each county reſpectively.

Clerks of ſaid Courts directed to lay ſaid eſtimates before the General Court.

II.

II. *And be it enacted by the authority aforesaid,* That the sums which shall from time to time be granted, or laid on the several counties within this Commonwealth by the General Assembly, for the purposes aforesaid, shall by the Justices aforesaid, be apportioned on the several towns and places within the respective counties, and by the Assessors shall be assessed, and by the Collectors or Constables collected, and paid in like manner as county taxes have been used and accustomed to be apportioned, assessed, collected and paid, agreeably to the laws of this Commonwealth, unless in such cases where the same shall be otherwise ordered by any act of the General Assembly.

The sums to be apportioned on the several towns, and by the Assessors to be assessed, &c. unless.

[This act passed *November* 2, 1781.]

Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

PART VII.

Militia Regulations.

An Act for regulating and governing the Militia of the Commonwealth of *Maſſachuſetts*, and for repealing all Laws heretofore made for that Purpoſe.

Preamble. *WHEREAS the laws now in force for regulating the militia of the Commonwealth, are found to be inſufficient for the ſaid purpoſe* :

Laws heretofore made for regulating the militia, repealed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſeveral laws heretofore made for regulating the militia aforeſaid, be, and hereby are repealed.

Proviſo. *Provided neverthelefs,* That all actions and proceſſes commenced and depending in any Court within this Commonwealth, upon or by force of the ſaid laws, ſhall, and may be ſuſtained and proſecuted to final judgment and execution ; and that all officers elected, appointed and commiſſionated agreeably to law, ſhall be continued in commiſſion, and hold their reſpective commands in the militia, in the ſame manner as they would in caſe the ſaid laws were ſtill in force.

II.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid militia ſhall be formed into a train-band, and alarm-liſt; the train-band to contain all able-bodied men, from ſixteen to forty years of age, and the alarm-liſt all other men under ſixty years of age, excepting in both caſes ſuch as ſhall be hereafter by this act exempted.

Militia, how formed.

III. *And be it further enacted by the authority aforeſaid,* That the ſaid militia be, and hereby is formed into four diviſions; the counties of *Suffolk, Eſſex* and *Middleſex,* compoſing the firſt diviſion; the counties of *Hampſhire, Worceſter* and *Berkſhire,* the ſecond diviſion; the counties of *Plymouth, Barnſtable, Briſtol, Dukes-County* and *Nantucket,* the third diviſion; and the counties of *York, Cumberland* and *Lincoln,* the fourth diviſion.

—To be in four diviſions.

IV. *And be it further enacted by the authority aforeſaid,* That there ſhall be a general and diviſionary ſtaff to each of the diviſions aforeſaid, conſiſting of one major-general, who ſhall have two aids de camp, a deputy adjutant-general, who ſhall alſo be inſpector, and a deputy quarter-maſter.

General and diviſionary ſtaff to each of the diviſions.

V. *And be it further enacted by the authority aforeſaid,* That the Governour, or commander in chief, with the advice of Council, be, and hereby is authorized and empowered, to form the ſaid diviſions into brigades, regiments and companies; and from time to time to alter and divide ſuch brigades, regiments and companies, as he ſhall judge expedient. *Provided notwithſtanding,* That the ſeveral brigades, regiments and companies of militia, ſhall remain as they are now formed, until new arrangements thereof ſhall take place.

Governour with advice of Council, to form diviſions into brigades, &c.

Proviſo.

VI. *And be it further enacted by the authority aforeſaid,* That there ſhall be a brigade general and ſtaff to each brigade of the militia aforeſaid, conſiſting of a brigadier-general, a brigade-major, who ſhall alſo be ſub-inſpector, and a brigade quarter-maſter.

Each brigade to have a brigadier general, &c.

VII. *And be it further enacted by the authority aforeſaid,* That there ſhall be a regimental, field, commiſſioned and non-commiſſioned ſtaff to each regiment of the militia aforeſaid, conſiſting of one colonel, one lieutenant-colonel, one major, one adjutant, one quarter-maſter, one ſerjeant-major, one quarter-maſter-ſerjeant, one drum-major, and one fife-major.

Each regiment to have a regimental, field, commiſſioned, and non-commiſſionnd ſtaff.

VIII. *And be it further enacted by the authority aforeſaid,* That there ſhall be one captain, one lieutenant, one enſign, one clerk, who ſhall be ſworn to the faithful diſcharge of his duty, four ſerjeants, four corporals, one drummer and one fifer, to each company of the ſaid militia. *Provided notwithſtanding,* That in companies where, in purſuance of the law which by this act is repealed, two lieutenants are in commiſſion, they ſhall continue to hold their preſent rank.

Companies to have one captain &c Clerk to be ſworn.

Proviſo.

IX. *And be it further enacted by the authority aforeſaid,* That the Governour, or commander in chief, ſhall appoint the deputy adjutant-general; the major-generals ſhall appoint the deputy quarter-maſters of their reſpective diviſions; the brigadier-generals ſhall appoint the quarter-maſters of their reſpective brigades; the colonels

Deputy adjutant general, deputy quarter maſters, &c. by whom appointed.

ſhall

ſhall appoint the ſerjeant-majors, quarter-maſter ſerjeants, drum-majors and fife-majors of their reſpective regiments; and the captains ſhall appoint the non-commiſſioned officers of their reſpective companies.

Adjutant general, deputy adjutant-general, &c. their rank.

X. *And be it further enacted by the authority aforeſaid*, That the adjutant-general ſhall be commiſſioned with the rank of brigadier-general, the deputy adjutant-generals with the rank of colonels, and the aids de camp and brigade-majors with the rank of majors; the adjutants ſhall be commiſſioned with the rank of firſt lieutenant, and the ſerjeants ſhall each receive a warrant from the colonel of the regiment to which they ſhall belong.

Major-generals, their duty.

XI. *And be it further enacted by the authority aforeſaid*, That each and every major-general be, and hereby is empowered, and it ſhall be his duty to give all ſuch orders as ſhall from time to time be neceſſary, conſiſtent with the law, for electing brigadier-generals, field-officers, captains and ſubalterns, in brigades, regiments and companies, within his reſpective diviſion, which have not been already commiſſioned; and for filling up vacancies of ſuch officers, or any of them, where they now are, or may hereafter happen. *Provided always*, That whenever a time ſhall be appointed for the election of any officer or officers, the electors ſhall have ten days notice thereof at leaſt; and all returns of elections, and of neglects or refuſals to make choice of officers, ſhall be made to the Governour, by the major-general, in whoſe diviſion the election ſhall be ordered; and all commiſſions ſhall paſs through the hands of the major-generals, to the officers in their reſpective diviſions, for whom they ſhall be made out; and every perſon who ſhall be elected to any office in the ſaid militia, and ſhall not within ten days after he ſhall have been notified of his election, ſignify his acceptance thereof, ſhall be conſidered as declining to ſerve in ſuch office, and orders ſhall be forthwith iſſued for a new choice.

Proviſo.

Perſons elected to the offices aforeſaid, to be ſworn, &c.

XII. *And be it further enacted by the authority aforeſaid*, That every perſon who ſhall be elected or appointed to any of the offices aforementioned, ſhall, at the time of receiving his commiſſion, take and ſubſcribe the oath and declaration required by the conſtitution of this Commonwealth, before ſome Juſtice of the Peace, or ſome general or field officer, who ſhall have previouſly taken and ſubſcribed them himſelf; and a certificate thereof ſhall be made upon the back of every commiſſion by the Juſtice of the Peace, or general or field officer, before whom the ſaid oath and declaration ſhall have been taken and ſubſcribed.

Non-commiſſioned officers & ſoldiers to equip themſelves with arms and accoutrements.

XIII. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned officer and private ſolder of the ſaid militia, not under the controul of parents, maſters or guardians, and being of ſufficient ability therefor in the judgment of the ſelectmen of the town in which he ſhall dwell, ſhall equip himſelf, and be conſtantly provided with a good fire-arm, with a ſteel or iron ramrod, a ſpring to retain the ſame, a worm, priming wire and bruſh, a bayonet fitted to his fire-arm, and a ſcabbard and belt for the ſame, a cartridge-box that will hold fifteen cartridges at leaſt, ſix flints,

one

one pound of powder, forty leaden balls ſuitable for his fire-arm, a haverſack, blanket and canteen ; and if any non-commiſſioned officer or private ſoldier ſhall neglect to keep himſelf ſo armed and equipped, he ſhall forfeit and pay a fine not exceeding *three pounds*, in proportion to the value of the article or articles in which he ſhall be deficient, at the diſcretion of the Juſtice of the Peace before whom trial ſhall be had.

Fine for non-equipment.

XIV. *And be it further enacted by the authority aforeſaid*, That all parents, maſters and guardians, ſhall furniſh thoſe of the ſaid militia who ſhall be under their care and command, with the arms and equipments afore-mentioned, under the like penalties for any neglect.

Parents, maſters and guardians, to equip thoſe under their care under the like penalties.

XV. *And be it further enacted by the authority aforeſaid*, That whenever the ſelectmen of any town ſhall judge any inhabitant thereof, belonging to the ſaid militia, unable to arm and equip himſelf in manner as aforeſaid, they ſhall, at the expence of the town, provide for and furniſh ſuch inhabitant with the aforeſaid arms and equipments, which ſhall remain the property of the town at the expence of which they ſhall be provided ; and if any ſoldier ſhall embezzel or deſtroy the arms and equipments, or any part thereof, with which he ſhall be ſo furniſhed, he ſhall upon conviction before ſome Juſtice of the Peace in the county where ſuch offender ſhall live, be adjudged to replace the article or articles which ſhall be by him ſo embezzeled or deſtroyed, and to pay the coſt ariſing from the proceſs againſt him ; and in caſe he ſhall not within fourteen days after ſuch adjudication againſt him perform the ſame, it ſhall be in the power of the ſelectmen of the town to which he ſhall belong, to bind him out to ſervice or labour, for ſuch term of time as ſhall in the diſcretion of the ſaid Juſtice, be ſufficient to procure a ſum of money equal to the amount of the value of the article or articles embezzeled or deſtroyed, and to pay the coſt ariſing as aforeſaid.

Perſons unable to equip themſelves, to be provided by the town.

Soldiers embezzling or deſtroying their arms, &c. how puniſhed upon conviction.

In caſe.

XVI. *And be it further enacted by the authority aforeſaid*, That every captain or commanding-officer of a company, ſhall call the train-band of his company together four days in a year, and oftener if he ſhall judge neceſſary, not exceeding ſix days in the whole, for the purpoſe of examining their arms and equipments, and inſtructing them in military exerciſes ; and ſhall alſo once in a year, on a day when he ſhall muſter the train-band of his company, call together the alarm-liſt belonging to his company, within the limits of the town of which they ſhall be inhabitants, for the purpoſe of examining their arms and equipments.

Officers to call together the train-band four days in a year, and the alarm-liſt once a year.

XVII. *And be it further enacted by the authority aforeſaid*, That when any captain or commanding officer of a company ſhall think fit to muſter or call his company together, he ſhall iſſue his orders therefor to one or more of his non-commiſſioned officers, if he ſhall have any, otherwiſe to one or more of the private ſoldiers belonging to his company, directing him or them to notify and warn the ſaid company to appear at ſuch time and place as ſhall be appointed, and with ſuch arms and equipments as ſhall be mentioned in the

Manner of calling together militia companies.

ſaid orders; and the non-commiſſioned officer or officers, or other perſon or perſons who ſhall receive ſuch orders, ſhall give notice of the time and place appointed for, and of the arms and equipments to be carried to the ſaid muſter, to each and every perſon he or they ſhall be ordered to warn, either verbally or by leaving a written notification thereof at the uſual place of abode of the perſon thus to be notified and warned; and no notice ſhall be deemed legal for muſters for the purpoſe of common and ordinary military exerciſes, unleſs it ſhall be given four days at leaſt previous to the time appointed therefor; and every non-commiſſioned officer or other perſon who ſhall neglect to give the ſaid notice and warning when ordered thereto, by the captain or commanding-officer of the company to which he ſhall belong, ſhall, for ſuch offence, forfeit and pay a ſum not exceeding *forty ſhillings*, nor leſs than *twenty ſhillings*, at the diſcretion of the Juſtice of the Peace before whom trial ſhall be had.

Penalties for neglect of duty, &c in non-commiſſioned officers and privates.

XVIII. *And be it further enacted by the authority aforeſaid*, That every non-commiſſioned officer and private ſoldier belonging to the train-band, and every perſon belonging to the alarm-liſt, who being duly notified of the time and place appointed for the muſter of the company to which he ſhall belong, ſhall unneceſſarily neglect to appear armed and equipped as the captain or commanding officer ſhall direct, ſhall pay a fine of *ten ſhillings*; and every non-commiſſioned officer and private ſoldier of the train-band, and every perſon belonging to the alarm-liſt, who ſhall be diſorderly or diſobedient on a muſter-day, ſhall be confined during the time of ſaid muſter at the diſcretion of his officers, and ſhall pay a fine not exceeding *forty ſhillings*, nor leſs than *twelve ſhillings*, at the diſcretion of the Juſtice of the Peace to whom complaint ſhall be made.

Proviſo.

Provided nevertheleſs, That when any non-commiſſioned officer or private ſoldier belonging to the train-band, or any other perſon belonging to the alarm-liſt, ſhall neglect to appear on a muſter-day when notified as aforeſaid, and ſhall within eight days thereafter make application to the captain or commanding officer of the company to which he ſhall belong, and obtain the excuſe of the ſaid captain or commanding officer, or ſhall pay him the aforeſaid fine of *ten ſhillings*, and ſhall procure a certificate thereof, in every ſuch caſe he ſhall be barred againſt any action or ſuit for ſuch offence.

Teſtimony of non-commiſſioned officers, and other perſons under oath, ſufficient to prove due notification.

Unleſs.

XIX. *And be it further enacted by the authority aforeſaid*, That the teſtimony of any non-commiſſioned officer or other perſon, under oath, who ſhall have received orders agreeably to law for notifying and warning any company, or a part thereof, to appear at a time and place appointed for a muſter, ſhall be ſufficient to prove that due notice ſhall have been given to the party againſt whom complaint may be made, unleſs ſuch teſtimony ſhall be invalidated by other ſufficient evidence.

Perſons neglecting duty—forfeiture.

XX. *And be it further enacted by the authority aforeſaid*, That when any perſon belonging to the train-band or alarm-liſt, ſhall, by neglect of duty by not appearing on muſter-days, or by not being provided with arms and equipments as this law directs, or by diſobedience

diſobedience of orders, or by diſorderly behaviour, forfeit any ſum of money ſet and affixed by this law to ſuch offences, or either of them, under the ſum of *four pounds*, the ſame ſhall be recovered in manner following, *that is to ſay*, The clerk of the company to which the offender ſhall belong, ſhall after the expiration of eight days, and within ſixty days after the offence ſhall be committed, make complaint thereof, and of all matters of ſubſtance and material circumſtances attending the ſame, to ſome Juſtice of the Peace in the county where ſuch offender ſhall live, who ſhall make a record thereof, and ſhall iſſue a ſummons to the party complained of, to be ſerved ſeven days at leaſt before the time appointed for the trial, in the form following, *mutatis mutandis*.

How recovered.

—— ſſ.

L. S. *To the ſheriff of the ſaid county, or his deputy, or any or either of the conſtables of the town of within the ſame county,* GREETING.

Form of a ſummons.

IN the name of the Commonwealth of *Maſſachuſetts*, you are hereby required to ſummon *C. D.* of in the county of to appear before me *E. F.* one of the Juſtices of the Peace for the county aforeſaid, at in on the day of at of the clock in the noon; then and there to ſhew cauſe, if any he has, why a warrant of diſtreſs ſhall not iſſue againſt him for [*here inſert the complaint*] Hereof fail not, and make due return of this writ, and of your doings therein, unto myſelf, at or before the ſaid day of Dated at aforeſaid, the day of in the year of our Lord, *E. F.* Juſtice of the Peace.

And when the ſaid party ſhall by himſelf, or his attorney, appear accordingly, he may plead the general iſſue and give any ſpecial matter in evidence; and if the ſaid party ſhall make default, or if judgment ſhall be given againſt him, and he ſhall neglect for four days thereafter to ſatisfy the ſame, and legal coſts, then the Juſtice of the Peace before whom the trial may be had, ſhall iſſue his warrant of diſtreſs, under his hand and ſeal, in the form following, *mutatis mutandis*.

Party appearing may plead the general iſſue, &c. and if defaulted and ſhall neglect to ſatisfy the judgment, then in this caſe.

—— ſſ.

L. S. *To the ſheriff of the ſaid county, or his deputy, or any or either of the conſtables of the town of within the ſame county,* GREETING.

Form of a warrant of diſtreſs.

WHEREAS *C. D.* of upon the day of being a private ſoldier in the train-band (as the caſe may be) of the company of foot commanded by in the regiment of militia, in the ſaid county of commanded by was duly notified to appear upon the day of in the town of in the county aforeſaid, with his arms and equipments, as the law of this Commonwealth directs; and the ſaid *C. D.* in violation of the ſaid law, did unneceſſarily neglect to appear (or did not appear armed and equipped, as the caſe may be) whereby he hath forfeited

forfeited and ought to pay the ſum of *ſhillings*, to the uſes directed by law: And the ſaid *C. D.* having been duly ſummoned to appear before me *E. F.* one of the Juſtices of the Peace for the county aforeſaid, to ſhew cauſe, if any he had, why a warrant of diſtreſs ſhould not be iſſued for the ſame ſum, did not appear (or appearing did not ſhew ſufficient cauſe why the ſame warrant ſhould not be iſſued, as the caſe may be):

IN the name of the Commonwealth of *Maſſachuſetts*, you are therefore commanded forthwith, of the goods or chattels of the ſaid *C. D.* within your precinct, to levy by diſtreſs and ſale thereof, the aforeſaid ſum of *ſhillings*, with for charges of ſuit, being in the whole the ſum of and to pay the ſame to clerk of the aforeſaid company; and alſo of the goods and chattels of the ſaid *C. D.* to levy for this writ, together with your own fees, and for want of ſuch goods or chattels of the ſaid *C. D.* to be by him ſhewn to you, or found within your precinct, you are commanded to take the body of the ſaid *C. D.* and him commit to the common goal in in the county aforeſaid; and the keeper thereof, is hereby commanded to receive the ſaid *C. D.* into the ſaid goal, and him ſafely keep until he ſhall pay the ſum aforeſaid, together with legal fees and coſts, or until he ſhall be otherwiſe diſcharged by order of law; and you are to make return of this warrant, with your doings therein, unto myſelf, within twenty days next coming, for which this ſhall be your ſufficient warrant. Hereof fail not. Given under my hand and ſeal, the day of in the year of our Lord,

E. F. Juſtice of the Peace.

Proviſo.

Provided always, That when any perſon ſhall appear before the Juſtice of the Peace, upon notification as aforeſaid, and ſhall claim an appeal to the Court of Common Pleas, next to be holden in the ſame county, to which he ſhall be, and hereby is entitled, the ſame ſhall be granted upon his recognizing with ſureties to proſecute his appeal, and to pay whatever fine, coſts and fees, ſhall be adjudged againſt him at the ſame Court, which recognizance ſhall be taken to the clerk of the company to which ſuch appellant ſhall belong, and ſhall be acknowledged before, and certified by the Juſtice of the Peace in the ſame manner as recognizances are in appeals from Juſtices of the Peace, in other caſes; and no appeal ſhall be allowed from the ſaid Court of Common Pleas.

Judgment rendered againſt appellants, to be treble the ſum, with coſts.

XXI. *And be it further enacted by the authority aforeſaid*, That if judgment ſhall be rendered againſt ſuch appellant in ſuch Court of Common Pleas, the judgment ſhall be three times the ſum of the fine ſet and affixed in this act, with additional coſts.

Fines how diſpoſed of.

XXII. *And be it further enacted by the authority aforeſaid*, That all ſums of money that ſhall be forfeited and recovered as aforeſaid, ſhall be diſpoſed of, one moiety to the clerk, who ſhall recover the ſame, and the other moiety to the captain of the company to which the offender ſhall belong, in truſt for the uſe of the ſaid company.

XXIII.

XXIII. *And be it further enacted by the authority aforeſaid,* That in all caſes to be determined as aforeſaid, the Juſtices of the Peace and the Courts of Common Pleas, before whom the ſame ſhall be, ſhall ſeverally tax the ſame fees as in actions between party and party in other caſes.

Fees, how and by whom taxed

XXIV. *And be it further enacted by the authority aforeſaid,* That every regiment of the train-band aforeſaid, ſhall muſter either in regiment or battalion, once in every year, at leaſt, on ſuch day and at ſuch place as the colonel or commanding officer ſhall appoint.

Every regiment to muſter either in regiment or battalion, once in every year.

XXV. *And be it further enacted by the authority aforeſaid,* That at a regimental muſter, the ſeveral companies compoſing the regiment, ſhall form in regiment or battalion, according to the rank of the officers preſent commanding them, in order that the companies may in all caſes be under the immediate command of their own officers.

On regimental muſters, how companies are to form.

XXVI. *And be it further enacted by the authority aforeſaid,* That each major-general ſhall make a return of the diviſion under his command, to the adjutant-general, on or before the firſt day of *June,* annually, ſpecifying the number of officers and ſoldiers, diſtinguiſhing the train-band from the alarm liſt, and the ſtate of their arms and equipments; and the adjutant-general ſhall digeſt the whole into a general return, and preſent the ſame to the commander in chief.

Return to be made by the major-general.

XXVII. *And be it further enacted by the authority aforeſaid,* That the adjutant-general, deputy-adjutant-generals and brigade-majors, ſhall prefer their accounts for ſervices performed in the execution of their duty, with proper vouchers and certificates, to the General Court, for allowance and payment.

General return to be made by the adj. general.

XXVIII. *And be it further enacted by the authority aforeſaid,* That every officer holding a commiſſion in the ſaid militia, who ſhall be accuſed of any unmilitary conduct, either in neglect of duty, diſobedience of orders, or in any other manner, ſhall be liable to be tried by a general Court-Martial, and if found guilty by ſuch Court, to be thereby ſentenced to be reprimanded by the Preſident thereof, or to be removed from his office.

Commiſſioned officers accuſed of unmilitary conduct, to be tried by a general court-martial.

XXIX. *And be it further enacted by the authority aforeſaid,* That no general Court-Martial ſhall conſiſt of a leſs number than thirteen commiſſioned-officers, the Preſident of which ſhall not be under the rank of a field-officer.

How many officers court-martials are to conſiſt of.

XXX. *And be it further enacted by the authority aforeſaid,* That the commander in chief ſhall appoint Courts-Martial for the trial of major-generals; major-generals ſhall appoint them for the trial of brigadier-generals, within their reſpective diviſions; and brigadier-generals ſhall appoint them for the trial of field-officers, and officers of rank inferior to that of field-officers, within their reſpective brigades; and no officer who ſhall appoint a Court-Martial, ſhall himſelf be Preſident thereof; nor ſhall any ſentence of a Court-Martial for the removal of any officer from his office, be put in execution, until it ſhall have been approved of by the commander in chief.

Court-martials, by & for whom appointed.

Sentence to be approved of by the Commander in Chief.

Judge Advocate by whom appointed.

XXXI. *And be it further enacted by the authority aforeſaid,* That the officer who ſhall appoint a Court-Martial, ſhall at the ſame time appoint a ſuitable perſon for a Judge-Advocate; and all officers to be tried by a Court-Martial, ſhall have ſeaſonable notice of the time and place appointed for trial, and a copy of the charges exhibited againſt him, and ſhall be put under arreſt ſo far as to be ſuſpended from the exerciſe of his office; and in caſe any officer, for the trial of whom a Court-Martial ſhall be appointed, ſhall neglect to appear and make defence, he ſhall be deemed by the ſaid Court guilty of the charge, and ſhall be ſentenced accordingly.

Delinquents to be arreſted.

In caſe.

Evidence---how ſummoned.

XXXII. *And be it further enacted by the authority aforeſaid,* That all perſons ſhall be holden to appear and give evidence before any Court-Martial, (under the ſame penalties for neglect, as are by law provided for witneſſes in other caſes) when thereto ſummoned by any Juſtice of the Peace, who is hereby authorized to ſummon ſuch witneſſes in the county to which he ſhall belong; and no fee ſhall be required by the Juſtice of the Peace for ſuch ſervice.

Members conſtituting court-martials, and witneſſes, by whom ſworn.

XXXIII. *And be it further enacted by the authority aforeſaid,* That all the members conſtituting a Court-Martial, ſhall, previouſly to their proceeding to the trial of any officer, and all the witneſſes, previouſly to their giving evidence, be ſworn by the Judge-Advocate; and the Judge-Advocate ſhall be ſworn by the Preſident of the ſaid Court-Martial.

And to the intent that ample proviſion be made for the defence of the Commonwealth under every circumſtance:

Artillery companies, by whom raiſed,

XXXIV. *Be it further enacted by the authority aforeſaid,* That the Governour, with the advice of Council, be, and hereby is empowered to raiſe by voluntary inliſtment, nine companies of artillery in the firſt diviſion of the ſaid militia, ſix companies in the ſecond diviſion, three companies in the third diviſion, and three companies in the fourth diviſion of the militia aforeſaid; each company to have one captain, one captain-lieutenant, one firſt lieutenant, two ſecond lieutenants, four ſerjeants, the firſt of whom ſhall be the clerk, four bombardiers included in rank and file, one drummer, one fifer, and twenty-five cannoniers; and to form the ſaid companies into two regiments, each of which ſhall have a field commiſſioned and non-commiſſioned ſtaff, conſiſting of one colonel, one lieutenant-colonel, one major, one adjutant, one quarter-maſter, one ſerjeant-major, one quarter-maſter-ſerjeant, one drum-major, and one fife-major.

Number of men companies are to conſiſt of.

To be form'd into two regiments properly officer'd.

Subject to the ſame regu'ations as the train-band.

XXXV. *And be it further enacted by the authority aforeſaid,* That the non-commiſſioned officers and private ſoldiers belonging to the ſaid corps of artillery, ſhall be armed and equiped in the ſame manner as the train-band of the ſaid militia are in this act directed to arm and equip themſelves.

Companies to be provided with 2 field-pieces, &c.

XXXVI. *And be it further enacted by the authority aforeſaid,* That each of the ſaid companies of artillery ſhall be provided and furniſhed at the expence of the Commonwealth, with two good field-pieces, with apparatus compleat, an ammunition cart, forty rounds of iron ſhot, twenty rounds of canniſter ſhot, and ſixty rounds of powder in flannel cartridges; which quantity of ammuniton ſhall be

be increaſed whenever the Governour or commander in chief may judge the ſafety of the Commonwealth ſhall require it; and the captains of the ſaid companies of artillery ſhall give their receipts for the ammunition and other articles with which the companies under their command ſhall be ſo provided, and be accountable for the ſame.

Cavalry——by whom raiſed.

XXXVII. *And be it further enacted by the authority aforeſaid,* That the Governour, with the advice of Council, be, and hereby is empowered, to raiſe, by voluntary inliſtment, three ſquadrons of cavalry in the firſt diviſion, and two ſquadrons of cavalry in the ſecond, and one in each of the other diviſions of the militia aforeſaid; each ſquadron to conſiſt of two troops, and each troop to have one captain, two lieutenants, one cornet, four ſerjeants, the firſt of whom ſhall be the clerk, one trumpeter, and thirty-four privates; and to form the ſame into a regiment, which ſhall have a field commiſſioned and non-commiſſioned ſtaff, conſiſting of one colonel, one lieutenant-colonel, one major, an adjutant, a quarter-maſter, and a trumpet-major.

How many each ſquadron to conſiſt of.

To be formed into a regiment.

Officers and privates to be provided with good horſes, &c.

XXXVIII. *And be it further enacted by the authority aforeſaid,* That every officer, non-commiſſioned officer and private, belonging to the ſaid cavalry, ſhall keep himſelf provided with a good horſe, not leſs than fourteen hands and an half high, a ſaddle, bridle, holſters, piſtols, ſword, boots and ſpurs, carbine with a ſpring and ſling, a cartouch-box, with twelve rounds of cartridge and ball for his carbine, and ſix for each piſtol, nine flints, a cloak and canteen.

Officers, how elected.

XXXIX. *And be it further enacted by the authority aforeſaid,* That the officers of the ſaid corps of artillery and cavalry ſhall be elected, appointed and commiſſioned, in the ſame manner as officers of the train-band, in the ſaid militia, are elected, appointed and commiſſioned.

Subject to the ſame rules, &c. as the train-band in the militia.

XL. *And be it further enacted by the authority aforeſaid,* That the officers, non-commiſſioned officers and privates belonging to the ſaid corps of artillery and cavalry, ſhall be ſubject to the ſame rules and regulations as are by this act provided for the train-band in the militia aforeſaid; and the ſeveral companies belonging to the ſaid corps ſhall be ſubject to the immediate orders of the major-general commanding the diviſion within which the ſame ſhall be raiſed.

XLI. *And be it further enacted by the authority aforeſaid,* That the colonels or commanding officers of the ſaid artillery and cavalry ſhall make return in time and manner as this act directs for the militia at large.

Perſons exempt from the train-band.

XLII. *And be it further enacted by the authority aforeſaid,* That Juſtices of the Courts of Common Pleas, Judges of Probate, Juſtices of the Peace, Sheriffs, elders and deacons of churches, church-wardens, maſters of arts, perſons who have by commiſſion under any government, or Congreſs, or by election in purſuance of any Congreſs of the United States, or either of them, held the office of a ſubaltern or officer of higher rank, perſons while actually employed as maſters of veſſels of more than thirty tons burthen, conſtables

ſtables and deputy-ſheriffs, and alſo ſuch phyſicians, ſurgeons, ſtated ſchool-maſters, ferrymen and millers, as the Selectmen of the towns to which they ſhall ſeverally belong, ſhall by a writing under their hands, ſignify the expediency of exempting, ſhall be, and hereby are exempted from the train-band aforeſaid.

Perſons exempt from the train-band & alarm-liſt,

XLIII. *And be it further enacted by the authority aforeſaid*, That the Lieutenant-Governour, members of the Council, Senate and Houſe of Repreſentatives, members of Congreſs, the Secretary of the Commonwealth, Juſtices of the Supreme Judicial Court, Selectmen for the time being, Miniſters of the Goſpel, Grammar School-Maſters, the officers and ſtudents of Harvard-College, the denomination of Chriſtians called Quakers, Negroes, Indians and Mulattoes, ſhall be, and hereby are exempted from both the train-band and alarm-liſt aforeſaid.

Towns to be provided with gun-powder, &c.

XLIV. *And be it further enacted by the authority aforeſaid*, That each town within this Commonwealth ſhall be conſtantly provided with one barrel of gun-powder, containing one hundred weight, three hundred weight of leaden balls of various ſizes, and three hundred flints, for every ſixty ſoldiers in the train-band, and the ſame proportion for any greater or ſmaller number.

Towns neglecting to provide,

Penalty.

XLV. *And be it further enacted by the authority aforeſaid*, That every town which ſhall neglect to keep conſtantly provided with the ſtock of ammunition aforeſaid, ſhall forfeit and pay, to the uſe of the Commonwealth, the ſum of *five pounds*, to be recovered by preſentment in the Court of General Seſſions of the Peace, in the county to which ſuch town ſhall belong; and it ſhall be the duty of Grand Jurors to make enquiry and cauſe to be preſented ſuch town or towns as ſhall be guilty of ſuch neglect.

Detachments ordered from the militia,

In caſe of neglect,

Penalty.

Fines how applied.

XLVI. *And be it further enacted by the authority aforeſaid*, That whenever the Governour or commander in chief ſhall order a detachment from the militia aforeſaid, and any perſon who ſhall be detached in obedience of ſuch orders, being duly notified thereof and ordered to march to the place of rendezvous, ſhall neglect or refuſe to obey ſuch order, or ſhall not within twenty-four hours after he ſhall have been notified as aforeſaid, pay a fine of *ten pounds* to the captain or commanding officer of the company to which he ſhall belong, or procure an able-bodied man in his ſtead, ſuch perſon ſhall be conſidered as a ſoldier in ſuch detachment, and be dealt with accordingly; and in all caſes where the ſaid fine ſhall be paid, the ſame ſhall be applied to hiring men for any ſervice which ſhall be required of the company under the command of the captain or officer who ſhall receive the ſame.

Quakers exempt from duty

XLVII. *And be it further enacted by the authority aforeſaid*, That the denomination of Chriſtians called Quakers, although exempted by this act from perſonal military ſervices, ſhall be ſubject nevertheleſs to pay their proportion of all expences for raiſing men for the publick defence; and the ſame ſhall be aſſeſſed upon them by the aſſeſſors of the towns to which they ſhall belong, according to the rules preſcribed by law for making other aſſeſſments, and ſhall be collected in the ſame manner as other taxes are collected; and

and the money which ſhall be ſo collected, ſhall be paid into the publick treaſury for the uſe of the Commonwealth; and the aſſeſſors of towns in which the ſaid aſſeſſments are by this law required, ſhall within ten days after orders ſhall be received by the military officers for raiſing men, aſſeſs the ſame, and commit a liſt or liſts thereof to ſome collector or collectors of the town, with ſufficient warrant to collect the ſame; and within twenty days after ſuch aſſeſſment, ſhall alſo make a return to the Treaſurer of the Commonwealth, ſpecifying the ſum or ſums by them aſſeſſed, and the collector or collectors to whom the aſſeſſment ſhall be committed; and aſſeſſors and collectors ſhall perform the ſaid ſervices under like penalties for neglect as the law provides in other caſes.

By whom aſſeſſed.

XLVIII. *And be it further enacted by the authority aforeſaid,* That the Governour, with the advice of Council, be, and hereby is empowered to appoint a ſuitable perſon to the office of quartermaſter-general, who ſhall be holden to perform the duties incident to his office, and ſhall receive compenſation therefor upon exhibiting his accounts, properly vouched and certified, to the General Court.

Qua. M. Gen. by whom appointed.

XLIX. *And be it further enacted by the authority aforeſaid,* That the Governour with the advice of Council, be, and hereby is empowered to appoint a deputy-commiſſary for each diviſion of the militia aforeſaid, who ſhall be ſworn to a faithful diſcharge of the duties of his office; and ſhall be accountable to, and obey the orders of the commiſſary-general of this Commonwealth, in all matters reſpecting his office,

Dep. Commiſſary by whom appointed.

L. *And be it further enacted by the authority aforeſaid,* That whenever the militia, or any part thereof, of any town within this Commonwealth, ſhall be ordered to march for the immediate defence of this or any of the United States of *America*, each officer and ſoldier ſhall provide and take with him three days proviſions, unleſs otherwiſe ordered; and the ſelectmen of ſuch town ſhall cauſe carraiges to attend them with further neceſſary proviſions and camp utenſils, and ſhall continue to forward to the commiſſary, or deputy-commiſſary, ſufficient ſupplies for the men marched from their reſpective towns, until notice ſhall be given to them by the commiſſary, or deputy-commiſſary, to deſiſt.

Officers and ſoldiers to be provided with three days proviſions, in certain caſes.

Unleſs.

Selectmen to cauſe carriages to attend with proviſions, &c.

And the ſelectmen who ſhall ſo furniſh ſupplies, ſhall lay their accounts, with proper certificates of the proviſions ſupplied by them, and of the expences incurred therefrom, before the General Court for allowance and payment.

Selectmen to lay their accounts before the General Court.

[This act, paſſed *March* 10, 1785.]

An Act in Addition to and for repealing certain Clauſes of an Act, paſſed the preſent Year, entitled, "An Act for regulating and governing the Militia of the Commonwealth of *Maſſachuſetts*, and for repealing all Laws heretofore made for that Purpoſe."

Certain paragraphs repealed

BE *it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the third, thirtieth, thirty-fourth, and thirty-ſeventh enacting paragraphs of the ſaid act, be, and they hereby are repealed.

Militia to be formed into nine diviſions,

II. *And be it enacted by the authority aforeſaid*, That the militia of this Commonwealth be, and it hereby is formed into nine diviſions: The county of *Suffolk*, to form the firſt diviſion; the county of *Eſſex*, the ſecond diviſion; the county of *Middleſex*, the third diviſion; the county of *Hampſhire*, the fourth diviſion; the counties of *Plymouth*, *Barnſtable*, *Briſtol*, *Dukes-County*, and *Nantucket*, the fifth diviſion; the counties of *York* and *Cumberland* the ſixth diviſion; the county of *Worceſter*, the ſeventh diviſion; the county of *Lincoln*, the eighth diviſion; and the county of *Berkſhire*, the ninth diviſion.

Artillery & cavalry to be raiſed in each diviſion

III. *And be it further enacted by the authority aforeſaid*, That the Governour with the advice of Council, be, and he hereby is authorized and empowered to raiſe, by voluntary enliſtment, in each of the aforeſaid diviſions, four, and where he ſhall judge expedient, five companies, of artillery, and two troops of cavalry: That each of ſaid companies of artillery ſhall conſiſt of one captain, one captain-lieutenant, one firſt lieutenant, two ſecond lieutenants, four ſerjeants (the firſt of whom ſhall be clerk) four bombardiers, to be included in rank and file, one drummer, one fifer, and forty-ſix privates: That each of the ſaid troops of cavalry, ſhall conſiſt of one captain, two lieutenants, one cornet, four ſerjeants (the firſt of whom to be clerk) four corporals, and thirty-ſix privates: And that when ſaid companies of artillery, and troops of cavalry, ſhall be raiſed as aforeſaid, the Governour, with the advice of Council, be, and he hereby is authorized to form the ſame into regiments and brigades.

To be formed into regiments and brigades

And that due proviſion may be made for perfecting the ſaid companies of artillery in the art of experimental gunnery:

Artillery companies to be annually furniſhed with ammunition.

IV. *Be it further enacted by the authority aforeſaid*, That the Governour, with the advice of Council, be, and he hereby is authoriſed, to order to be iſſued to each of the captains of the ſaid companies of artillery, annually, a quantity of powder, not exceeding one barrel, and a due proportion of ſhot and other labaratory articles, to be appropriated by the ſaid officers to the purpoſe abovementioned; ſaid captains to give their receipt therefor, and to be accountable for the expenditure of the ſame.

And whereas it hath been found to be promotive of military knowledge to encourage the formation of cadet companies, and other military corps:

V.

V. *Be it therefore enacted by the authority aforeſaid*, That when any major-general, commander of a diviſion of militia in this Commonwealth, ſhall certify to the Governour, that in his opinion it will be expedient and for the good of the Commonwealth, that one or more companies of cadets, or other corps, ſhould be raiſed in his diviſion, the Governour with advice and conſent of the Council, be, and he is hereby authorized and empowered (if he judge expedient) to raiſe ſuch cadet company, companies, or corps; and when any ſuch company or corps, ſhall be raiſed, they ſhall elect their officers in the ſame manner, and in the ſame proportion, as is provided for the election of officers of other companies and corps of militia, in this Commonwealth; and the officers ſo elected ſhall be commiſſioned by the Governour. *Provided always*, That no ſuch cadet company or corps ſhall be raiſed in any of ſaid diviſions, when by means thereof, any of the ſtanding companies within the ſame, would be reduced to a leſs number than ſixty privates.

Governour and Council authorized to raiſe cadet companies, &c.

Officers, how elected.

Proviſo.

VI. *And be it further enacted by the authority aforeſaid*, That the ſaid companies or corps, when raiſed and organized, ſhall be under the command of the major-general of the diviſion in which they ſhall be reſpectively formed; and ſhall be ſubject to the rules and regulations, that are already or may hereafter be provided by the legiſlature, or the commander in chief of the militia of this Commonwealth, for the general government of the militia.

To be ſubject to the ſame rules, &c. as the militia.

VII. *And be it further enacted by the authority aforeſaid*, That the commander in chief ſhall appoint general courts-martial, for the trial of all officers above the rank of captain: That the major-generals, each in his own diviſion, ſhall appoint general courts-martial for the trial of captains, and all commiſſioned officers under that rank: And that it ſhall be the duty of every officer who ſhall appoint a court-martial, as aforeſaid, to approve or diſapprove of the ſentence, or ſentences, of ſuch court-martial by them appointed, and no officer who ſhall appoint a court-martial ſhall be preſident thereof; nor ſhall any ſentence of a court-martial be put in execution, until it ſhall have been approved of by the officer who appointed the ſame.

Courts-Martial, by whom appointed.

Sentences to be approved.

VIII. *And be it further enacted by the authority aforeſaid*, That when a general court-martial ſhall ſentence any officer to be removed from office, the court ſhall therein adjudge ſuch officer incapable of holding any military commiſſion, under this Commonwealth, for life, or for years, according to the nature and aggravation of his offence; and ſuch ſentence, after being approved as aforeſaid and publiſhed, ſhall remain in force, unleſs reverſed by the General Court.

Officers ſentenced, ſhall be adjudged incapable of holding any military commiſſion, for life or years.

IX. *And be it further enacted by the authority aforeſaid*, That before any general court-martial ſhall proceed to the trial of any cauſe, the judge-advocate ſhall adminiſter to the preſident, and each of the members, the following oath, *viz.*

Preſident and members to be ſworn previous to trial.

YOU *A. B.* do ſwear, that you will well and truly try and determine, according to the evidence given you, the cauſe now before you,

Form of the oath.

you, between this Commonwealth and the perſon to be tried: And you do further ſwear, that you will not divulge the ſentence of this court-martial, until it ſhall be approved or diſapproved of; and that you will not on any account, at any time whatever, diſcover the vote or opinion of any member of the court, unleſs required to give evidence thereof, as a witneſs, by a court of juſtice, in a due courſe of law. *So help you GOD.*

Judge Advocate to be ſworn.

And the preſident ſhall adminiſter to the judge-advocate the following oath, *viz.*

Form of the oath.

YOU *A. B.* do ſwear, that you will not on any account, at any time whatever, divulge the vote or opinion of any particular member of this court-martial, unleſs required to give evidence thereof, as a witneſs, by a court of juſtice, in a due courſe of law, and that you will not diſcloſe the ſentence of this court-martial, until it ſhall have been approved or diſapproved of, by the officer who appointed the ſame. *So help you GOD.*

Non-commiſſioned officers, guilty of neglect, &c. to be reduced to private ſoldiers.

X. *And be it further enacted by the authority aforeſaid,* That in all caſes where any non-commiſſioned officer ſhall be convicted before any Juſtice of the Peace, or Court of Common Pleas, of having been guilty of neglect of duty, or diſobedience of orders, ſaid non-commiſſioned officer ſhall in conſideration thereof, be conſidered as reduced to the ſtation of a private ſoldier.

Adj. gen, to be inſpector general alſo.

XI. *And be it further enacted by the authority aforeſaid,* That the adjutant-general of the militia of this Commonwealth ſhall alſo be inſpector-general of the ſame.

[This act paſſed *November* 29, 1785.]

An Act in Addition to an Act, entitled, "An Act in Addition to, and for repealing certain Clauſes of an Act, paſſed the preſent Year, entitled, "An Act for regulating and governing the Militia of the Commonwealth of *Maſſachuſetts*, and for repealing all Laws heretofore made for that Purpoſe."

Preamble.

WHEREAS by the law paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-five, for regulating and governing the militia of this Commonwealth, it is provided, "That all officers elected, appointed and commiſſionated, at the time of paſſing the ſaid law, ſhall be continued in commiſſion, and hold their reſpective commands in the militia." And whereas by another law, paſſed the ſame year, the ſaid militia is formed into nine diviſions, each of which is to be commanded by a major-general; and it is inexpedient that major-generals ſhould hold commiſſions in the militia, who ſhall not have the immediate command of diviſions aſſigned them: Be

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the providing clauſe, annexed to the firſt enacting paragraph of the act, paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-five, entitled, "An Act for regulating and governing the militia of the Commonwealth of *Maſſachuſetts*, and for repealing all laws heretofore made for that purpoſe," ſo far as the ſame relates to major-generals, be, and hereby is declared void and of no effect. Clauſe of a former act repealed.

II. *And be it further enacted by the authority aforeſaid,* That every perſon who may at any time hereafter, be elected a major-general, in any diviſion of the militia of this Commonwealth, and ſhall not within forty days, after he ſhall be duly notified of his election by the Secretary, ſignify his acceptance thereof, he ſhall be conſidered as declining to accept his appointment, and a new choice ſhall be had. Perſons elected major-generals, to ſignify their acceptance within forty days.

III. *And be it further enacted by the authority aforeſaid,* That every perſon already elected a major-general, in any diviſion of the militia, who hath had due notice of his election given him by the Secretary, and neglects to ſignify his acceptance thereof, and ſhall delay to accept his appointment thirty days from the paſſing this act, he ſhall be conſidered as declining to ſerve in the ſaid office of major-general. Thoſe already choſen, delaying to ſignify their acceptance thirty days, conſidered as declining to ſerve.

[This act paſſed *March* 20, 1786.]

An Act in Addition to the ſeveral Laws now in force for regulating and governing the Militia of this Commonwealth.

WHEREAS by the laws now in force for regulating and governing the militia, proviſion is made that every officer holding a commiſſion in ſaid militia, who ſhall upon trial before a court-martial, be found guilty of any unmilitary conduct, either in neglect of duty or diſobedience of orders, ſhall be liable to be ſentenced by ſuch court-martial, to be reprimanded by the Preſident thereof, or removed from his office: And whereas in times of publick inſurrections or rebellion, ſome commiſſioned officers may be ſo loſt to a ſenſe of honour, or ſo inimical to law and government, as to neglect or refuſe to make ſuch detachments from the corps under their reſpective command, as may be ordered by the commander in chief, notwithſtanding the aforeſaid proviſion: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That any officer holding a commiſſion in the militia, who ſhall neglect or refuſe to execute any orders he may receive from his ſuperiour officer, to make a detachment from the corps under his command, it ſhall be the duty of the officer who iſſued ſuch order, Penalty when officers refuſe or neglect to execute orders, &c.

immediately to arreſt ſuch delinquent officer, bring him to trial therefor, before a general court-martial, and forthwith give information thereof to the commander in chief; and the officer who iſſued the orders which ſhall not have been executed as aforeſaid, ſhall immediately after the arreſting of the delinquent officer, proceed by himſelf or ſome other officer under his command, to make and compleat the detachment ordered as aforeſaid. And when any regiment or company ſhall not be organized, the ſuperiour officer ſhall make the detachment from ſuch regiment or company, either by himſelf, or ſome other officer whom he ſhall appoint.

Preamble. And whereas, in and by the laws aforeſaid, it is provided, that whenever the Governour or commander in chief, ſhall order a detachment from the militia, and any perſon who ſhall be detached purſuant to ſuch orders, being duly notified thereof, and ordered to march to the place of rendezvous, ſhall neglect or refuſe to obey ſuch orders, or ſhall not within twenty-four hours after he ſhall have been notified as aforeſaid, pay a fine of *ten pounds*, to the captain or commanding officer of the company to which he ſhall belong, or procure an able-bodied man in his ſtead, ſuch perſon ſhall be conſidered as a ſoldier in ſuch detachment, and dealt with accordingly: And whereas it may ſo often happen by the diſcharge of ſuch detachment, or the abſconding of ſuch delinquent, that he may evade his duty, and eſcape the puniſhment by law provided for deſertion:

Penalty for delinquent non-commiſſioned officers or ſoldiers. II. *Be it therefore enacted by the authority aforeſaid*, That when any non-commiſſioned officer or private, ſhall be a delinquent as aforeſaid, and ſhall endeavour to avoid puniſhment as aforeſaid, or if the detachment ſhall be diſcharged before ſuch delinquent ſhall have been puniſhed, he ſhall pay a fine of *twelve pounds*, to be ſued for and recovered by the clerk of the company to which ſuch perſon belongs, provided the ſame be ſued for within twelve months after the diſcharge of ſuch detachment; the ſaid fine to be diſpoſed of, for the purpoſe of hiring men as provided by the laws aforeſaid.

Penalty for deſertion. III. *And be it further enacted by the authority aforeſaid*, That any perſon who ſhall deſert from any detachment from the militia, and ſhall not return to his duty, and by abſconding untill the diſcharge of ſuch detachment, ſhall eſcape the puniſhment due in caſe of deſertion, he ſhall forfeit and pay the ſum of *twelve pounds*, to be ſued for and recovered in the manner, and applied for the purpoſe aforeſaid.

Preamble. And whereas it is provided in the aforeſaid militia law, "that whenever the militia or any part thereof, of any town within this Commonwealth, ſhall be ordered to march for the immediate defence of this or any of the United States of *America*, the ſelectmen of ſuch town ſhall cauſe carriages to attend them with neceſſary proviſions and camp utenſils, and ſhall continue to forward to the commiſſary, or deputy-commiſſary, ſufficient ſupplies for the men marched from their reſpective towns, until notice ſhall be given to them by the commiſſary or deputy-commiſſary, to deſiſt;" but no penalty is annexed for a neglect of ſaid duty in the ſaid ſelectmen:

Be

IV. *Be it therefore enacted by the authority aforeſaid*, That whenever the ſelectmen of any town in this Commonwealth from which the militia, or any part thereof, ſhall be ordered to march for the purpoſe mentioned in the ſaid militia law, ſhall be notified by any officer of the militia within the ſaid town, or in caſe there be no ſuch officer, by any officer authorized for that purpoſe, of the number of men to be marched therefrom, and ſhall refuſe or neglect at the expence of ſuch town, to cauſe carriages to attend them with ſufficient ſupplies of proviſions or camp utenſils, directed as aforeſaid, the town to which ſuch ſelectmen belong, ſhall pay a fine not exceeding *fifty pounds*, to be ſued for and recovered by any perſon who ſhall proſecute the ſame; one moiety of the ſum recovered to go to the uſe of the proſecutor, and the other to the uſe of this Commonwealth.

Penalty when ſelectmen refuſe or neglect to cauſe carriages to attend the militia, &c.

V. *And be it further enacted*, That the officer to whom ſuch camp utenſils ſhall be delivered by the ſelectmen, ſhall give his receipt therefor, and ſhall take a receipt for the ſame of the men to whom they may be delivered, to be uſed with a promiſe to the ſelectmen, named in ſuch receipt, that the utenſils ſhall be returned to the ſelectmen by whom they were furniſhed, if they are not loſt or broken by unavoidable accident, and ſuch officer ſhall be entitled to receive the receipt which ſhall be given by him as aforeſaid, on his producing and delivering to ſuch ſelectmen the receipt or receipts containing a promiſe as aforeſaid; and if it ſhall appear that any utenſils furniſhed as aforeſaid, have been loſt or broken by unavoidable accident, the value thereof ſhall be paid out of the treaſury of the Commonwealth, to the ſelectmen who furniſhed the ſame, or their ſucceſſors in office, for the uſe of the town; and the ſelectmen of each town are hereby directed to provide and keep in good order, one tin camp kettle for every twenty men, which ſhall be in the train-band of their reſpective towns.

Officers to whom camp utenſils ſhall be delivered by the ſelectmen, ſhall receit therefor, &c.

And whereas by the ſaid militia law it is provided, that every non-commiſſioned officer and private belonging to the cavalry, ſhall keep himſelf provided with a carbine, with a ſpring and ſling and twelve rounds of cartridges and ball for his carbine; but it is found unneceſſary that the ſaid non-commiſſioned officers and privates ſhould be provided with the ſame:

VI. *Be it therefore enacted by the authority aforeſaid*, That the non-commiſſioned officers and privates, belonging to the cavalry within this Commonwealth, be, and hereby are excuſed from providing themſelves with a carbine and cartridges for the ſame, any thing in the ſaid militia law to the contrary notwithſtanding.

Cavalry excuſed from providing carbines and cartridges.

VII. *And be it further enacted by the authority aforeſaid*, That the proviſo in the twentieth enacting paragraph of the militia act, paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-five, giving an appeal from a judgment given by a Juſtice of the Peace, to the Court of Common Pleas in certain caſes; and alſo, the twenty-firſt enacting paragraph in the ſame act, be, and hereby are repealed, ſo far as may relate to any ſuit where ſuch appeal ſhall not be made before the firſt day of *June* next, and the judgment

Proviſo and an enacting clauſe in a former act repealed.

judgment of a Juſtice of the Peace in caſes therein deſcribed, ſhall be final and concluſive.

[This act paſſed *March* 2, 1787.]

An Act for raiſing and forming a Regiment of Cavalry in the County of *Worceſter*.

Governour and Council empowered to raiſe one regiment of cavalry in the county of Worceſter.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That the Governour, with the advice of Council, be, and he hereby is empowered to raiſe by voluntary enliſtment, in the room of two troops of cavalry, as already provided by law, one regiment of cavalry in the county of *Worceſter*, to conſiſt of one colonel, one lieutenant-colonel, one major, one adjutant, one quarter-maſter, one ſerjeant major, one quarter-maſter ſerjeant, one trumpet-major, and eight troops, to conſiſt of the ſame number of officers, non-commiſſioned officers and privates, as is provided in the militia law of this Commonwealth for the other troops of cavalry.

Proviſo.

Provided nevertheleſs, That not more than five men ſhall enliſt from the training-band of any one company of militia in ſaid county, and when ſo enliſted, they ſhall proceed to elect their officers in the ſame way and manner as is provided in the militia law; and the Governour, with the advice of Council, is hereby authorized and empowered to commiſſion the ſame.

To be mounted and accoutred, &c. agreeably to the militia law.

II. *And be it further enacted*, That when ſaid regiment ſhall be raiſed and formed, they ſhall be mounted, accoutred and equipt, agreeably to the directions of the militia law of this Commonwealth, for mounting, accoutring and equipping the other corps of cavalry; and that the ſaid regiment be governed by the regulations made and provided for the government of the militia of this Commonwealth.

Governour and Council to appoint ſome perſon to receive enliſting orders.

III. *And be it further enacted*, That the Governour, with advice of Council, ſhall appoint ſome ſuitable perſon to receive enliſting orders for raiſing the ſaid regiment; and the major-general of the diviſion in which ſaid regiment ſhall be raiſed, is hereby directed to give orders for the election of the officers of ſaid regiment, as is provided by the militia laws of this Commonwealth for the electing the officers of the militia at large.

[This act paſſed *February* 17, 1786.]

An

An Act for eſtabliſhing Rules and Articles for governing the Troops ſtationed in Forts and Garriſons, within this Commonwealth; and alſo the Militia, or any Part thereof, when called into actual Service.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That the following rules and articles be, and they hereby are eſtabliſhed, and declared to be in force, for governing all troops ſtationed in forts and garriſons within this Commonwealth; and alſo the militia, or any part thereof, when called into actual ſervice, *viz.* Rules eſtabliſhed.

ARTICLE *firſt.* All officers and ſoldiers ſhall diligently attend divine ſervice: And all officers and ſoldiers who ſhall unneceſſarily abſent themſelves from, or behave indecently or irreverently at any place of divine worſhip, ſhall, if commiſſioned officers, be brought before a general Court-Martial, there to be publickly and ſeverely reprimanded by the preſident; if non-commiſſioned officers or ſoldiers, every perſon ſo offending, ſhall for the firſt offence forfeit *one ſhilling*, to be deducted out of his next pay; for the ſecond offence he ſhall not only forfeit a like ſum, but be confined twenty-four hours; and for every like offence ſhall ſuffer and pay in like manner; which money ſo forfeited, ſhall be applied to the uſe of the ſick ſoldiers of the troop or company to which the offender belongs. Officers and ſoldiers to attend divine ſervice.

ART. *ſecond.* Whatſoever non-commiſſioned officer or ſoldier ſhall uſe any profane oath or execration, ſhall incur the penalties expreſſed in the foregoing article: And if a commiſſioned officer be thus guilty of profane curſing or ſwearing, he ſhall forfeit and pay for each and every ſuch offence, *four ſhillings.* Puniſhment for profane oaths.

ART. *third.* Whatſoever officer or ſoldier ſhall preſume to uſe traitorous or diſreſpectful words againſt the authority of the United States, in Congreſs aſſembled, or the Legiſlature of this Commonwealth; if a commiſſioned officer, he ſhall be caſhiered; if a non-commiſſioned officer or ſoldier, he ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a Court-Martial. —For traitorous or diſreſpectful words.

ART. *fourth.* Any officer or ſoldier who ſhall behave himſelf with contempt or diſreſpect towards the commander in chief, or any general or commanding officer of the troops or militia of this Commonwealth, or ſhall ſpeak words tending to his hurt or diſhonour, ſhall be puniſhed according to the nature of his offence, by the judgment of a Court-Martial. —For contempt or diſreſpect.

ART. *fifth.* Any officer or ſoldier who ſhall begin, excite, cauſe or join in any mutiny or ſedition, in the troop, company or regiment to which he belongs, or in any other troop or company in the ſervice of this Commonwealth, or in any party, poſt, detachment or guard, on any pretence whatſoever, ſhall ſuffer ſuch puniſhment as by a Court-Martial ſhall be inflicted. Mutiny.

ART. *ſixth.* Any officer, non-commiſſioned officer or ſoldier who being preſent at any mutiny or ſedition, doth not uſe his utmoſt endeavours to ſuppreſs the ſame; or coming to the know- Puniſhment for not uſing endeavours to ſuppreſs the ſame.

ledge of any intended mutiny, doth not without delay give information thereof to his commanding officer, ſhall be puniſhed by ſentence of a Court-Martial according to the nature of his offence.

Puniſhment for ſtrikingor offering violence to ſuperior officers.

ART. *ſeventh.* Any officer or ſoldier who ſhall ſtrike his ſuperior officer, or draw or lift up any weapon or offer any violence againſt him, being in the execution of his office, on any pretence whatſoever, or ſhall diſobey any lawful command of his ſuperior officer, ſhall ſuffer ſuch puniſhment, as ſhall, according to the nature of his offence, be inflicted upon him by the ſentence of a Court-Martial.

Deſertion.

ART. *eighth.* Any non-commiſſioned officer or ſoldier, who ſhall deſert or without leave from his commanding officer, abſent himſelf from the troop or company to which he belongs, or from any detachment of the ſame, ſhall, upon conviction thereof, ſuffer death, or ſuch other puniſhment as ſhall be inflicted by the ſentence of a general Court-Martial.

Puniſhment for perſuading others to deſert.

ART. *ninth.* Whatever officer or ſoldier ſhall be convicted of having adviſed or perſuaded any other officer or ſoldier to deſert, ſhall ſuffer ſuch puniſhment as ſhall be inflicted by the ſentence of a Court-Martial.

For provoking ſpeeches, or challenges.

ART. *tenth.* No officer or ſoldier ſhall uſe any reproachful or provoking ſpeeches or geſtures to another; nor ſhall any officer or ſoldier preſume to ſend a challenge to any perſon to fight a duel, upon pain, if a commiſſioned officer, of being caſhiered; if a non-commiſſioned officer or ſoldier, of ſuffering corporal puniſhment, at the diſcretion of a Court-Martial.

Officers ſuffering others to fight, how puniſhed.

ART. *eleventh.* If any commiſſioned or non-commiſſioned officer commanding a guard, ſhall knowingly and willingly ſuffer any perſon whatſoever, to go forth to fight a duel, he ſhall be puniſhed as a challenger; and likewiſe all ſeconds, promoters and carriers of challenges, in order to duels, ſhall be deemed as principals, and be puniſhed accordingly.

All officers empowered to quell quarrels, frays, &c.

ART. *twelfth.* All officers of what condition ſoever ſhall have power to part and quell all quarrels, frays and diſorders, though the perſons concerned ſhould belong to another regiment, troop or company; and either to order officers into arreſt, or non-commiſſioned officers or ſoldiers to priſon, until their proper ſuperior officers ſhall be acquainted therewith; and whoſoever ſhall refuſe to obey ſuch officer (though of an inferior rank) or ſhall draw his ſword upon him, ſhall be puniſhed at the diſcretion of a general Court-Martial.

Puniſhment for refuſing.

Puniſhment for upbraiding another for refuſing challenges.

ART. *thirteenth.* Whatſoever officer or ſoldier ſhall upbraid another for refuſing a challenge, ſhall be conſidered as a challenger and puniſhed accordingly.

Officers to keep good order, and redreſs abuſes.

ART. *fourteenth.* Every officer commanding in quarters, garriſons or on a march, ſhall keep good order, and to the utmoſt of his power redreſs all ſuch abuſes or diſorders as may be committed by any officer or ſoldier under his command; and if upon complaint made to him of officers or ſoldiers beating or otherwiſe ill treating any perſon, or of committing any kind of riots to the diſ-

quieting

quieting the good citizens of this or either of the United States, he shall refuse or omit to see justice done on the offender or offenders, and reparation made to the party or parties injured, so far as the offender's pay shall enable him or them, he shall, upon proof thereof, be punished by a general Court-Martial, as if he himself had committed the crimes or disorders complained of.

Punishset for refusing.

ART. *fifteenth.* If any officer shall think himself to be wronged by his colonel, or the commanding officer of the regiment, and shall, upon due application made to him, be refused to be redressed, he may complain to the general or commander in chief of the forces in service, in order to obtain justice, who shall examine into the complaint and see that justice be done.

Any officer thinking himself wronged by his colonel, may complain to the general.

ART. *sixteenth.* If any inferior officer or soldier, shall think himself wronged by his captain, or other officer commanding the troop or company to which he belongs, he may complain thereof to the commanding officer of the regiment, who shall summon a regimental Court-Martial, for the doing justice to the complainant; from which regimental Court-Martial either party, if he thinks himself still aggrieved, may appeal to a general Court-Martial. But if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished at the discretion of the said general Court-Martial.

Any inferior officer or soldier, wronged by his captain, may complain to the colonel.

ART. *seventeenth.* Whatsoever non-commissioned officer or soldier shall be convicted at a Court-Martial, of having sold, or designedly, or through neglect, wasted the ammunition delivered out to him to be employed in the service of this Commonwealth, shall, if a non-commissioned officer be reduced to a private centinel, and if a soldier, shall suffer such punishment as shall be inflicted upon him by a Court-Martial.

Punishment for selling or wasting ammunition.

ART. *eighteenth.* All non-commissioned officers and soldiers, who shall be found one mile from the camp without leave in writing from their commanding officer, shall suffer such punishment as shall be inflicted on them by the sentence of a Court-Martial.

——For being found one mile from camp, without leave.

ART. *nineteenth.* No officer or soldier shall be out of his quarters or camp, without leave from his commanding officer, upon penalty of being punished according to the nature of his offence, by the sentence of a Court-Martial.

—For being out of quarters or camp, without leave.

ART. *twentieth.* Every non-commissioned officer and soldier shall retire to his quarters or tent, at the beating of the retreat; in default of which he shall be punished according to the nature of the offence, by the sentence of a Court-Martial.

Soldiers to retire to quarters at the beating of the retreat.

ART. *twenty-first.* No officer, non-commissioned officer or soldier, shall fail to repair at the time fixed, to the place of parade or exercise, or other rendezvous, appointed by his commanding officer, if not prevented by sickness, or some other evident necessity; nor shall go from the said place of rendezvous, or from the guard, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of his offence, by the sentence of a Court-Martial.

Punishment for not repairing to the place of parade at the time fixed.

ART.

Puniſhment for being found drunk on guard or other duty.

ART. *twenty-ſecond.* Whatever commiſſioned officer ſhall be found drunk on his guard, party or other duty, under arms, ſhall be caſhiered for it; and any non-commiſſioned officer or ſoldier, ſo offending, ſhall ſuffer ſuch puniſhment as ſhall be inflicted by the ſentence of a Court-Martial.

Centinels found ſleeping on their poſts, how puniſhed.

ART. *twenty-third.* Whatſoever centinel ſhall be found ſleeping upon his poſt, or ſhall leave it before he ſhall be regularly relieved, ſhall ſuffer ſuch puniſhment as ſhall be inflicted by the ſentence of a general Court-Martial.

Puniſhment for occaſioning falſe alarms.

ART. *twenty-fourth.* Any perſon belonging to the forces employed in the ſervice of this Commonwealth, who by diſcharging of fire-arms, drawing of ſwords, beating of drums, or by any other means whatſoever, ſhall occaſion falſe alarms in camp, garriſon or quarters, ſhall ſuffer ſuch puniſhment as ſhall be ordered by the ſentence of general Court-Martial.

Puniſhment for quitting platoons, &c.

ART. *twenty-fifth.* Any officer or ſoldier, who ſhall without urgent neceſſity, or without the leave of his ſuperior officer, quit his platoon or diviſion, ſhall be puniſhed according to the nature of his offence, by the ſentence of a Court-Martial.

—— for offering inſult or abuſe to perſons bringing proviſions, &c.

ART. *twenty-ſix.* No officer or ſoldier ſhall do violence or offer any inſult or abuſe to any perſon who ſhall bring proviſions or other neceſſaries to the camp, garriſon or quarters, of the forces of this Commonwealth, on pain of ſuffering ſuch puniſhment as a Court-Martial ſhall direct.

—— for abandoning poſts in time of an engagement.

ART. *twenty-ſeventh.* Whatſoever officer or ſoldier ſhall abandon any poſt committed to his charge, or ſhall ſpeak words inducing others to do the like in time of an engagement, ſhall ſuffer death; or ſuch other puniſhment as ſhall be inflicted by the ſentence of a general Court-Martial.

—— for making known the watch-word.

ART. *twenty-eight.* Any perſon belonging to the forces in the ſervice of this Commonwealth, who ſhall make known the watch-word to any perſon not entitled to receive it according to the rules and diſcipline of war, or ſhall preſume to give the parole or watch-word different from what he received, ſhall ſuffer death, or ſuch other puniſhment as ſhall be ordered by the ſentence of a general Court-Martial.

—— for relieving the enemy with money, &c.

ART. *twenty-nine.* Whoſoever belonging to the forces in the ſervice of this Commonwealth, ſhall relieve the enemy with money, victuals or ammunition; or ſhall knowingly harbour and protect an enemy, ſhall ſuffer ſuch puniſhment as by the ſentence of a Court-Martial ſhall be inflicted.

Puniſhment for correſponding with the enemy.

ART. *thirtieth.* Whoſoever belonging to the *Maſſachuſetts* forces, ſhall be convicted of holding correſpondence with, or giving intelligence to the enemy, either directly or indirectly, ſhall ſuffer ſuch puniſhment as by the ſentence of a Court-Martial ſhall be inflicted.

Publick ſtores taken, to be for the uſe of the Commonwealth

ART. *thirty-firſt.* All publick ſtores taken from the enemy by the forces in the ſervice of this Commonwealth, ſhall be ſecured for the uſe of the Commonwealth.

ART.

ART. *thirty-second.* If any officer or soldier shall leave his post or colours to go in search of plunder, he shall, upon conviction thereof, before a general Court-Martial, suffer such punishment as by the sentence of the said Court-Martial shall be inflicted. Punishment for leaving posts, in search of plunder.

ART. *thirty-third.* If any commander of any garrison, fortress or post, shall be compelled, by the officers or soldiers under his command, to give up to the enemy, or to abandon it, the commissioned officers, non-commissioned officers or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a Court-Martial. Punishment for compelling any commanding officer to abandon or give up his post to the enemy.

ART. *thirty-fourth.* All sutlers and retainers to the camp, and all persons serving with the *Massachusetts* troops, in the field, shall be subject to orders according to the rules and discipline of war. Sutlers and retainers subject to orders, &c.

ART. *thirty-fifth.* If upon marches, guards, or in quarters, different corps shall happen to join, or do duty together, the eldest officer by commission there, on duty or in quarters, shall command the whole, and give out orders for what is needful for the service, regard being always had to the several ranks of those corps, and the posts they usually occupy. When different corps are joined, eldest officer to command.

ART. *thirty-sixth.* If any regiments, troops, or detachments of horse or foot, shall happen to march with, or be encamped or quartered with any bodies or detachments of other troops, the eldest officer, without respect to corps, shall take upon him the command of the whole, and give the necessary orders to the service. If detachments of horse, &c. are quartered with other troops, the eldest officer to command, without respect to corps.

ART. *thirty-seventh.* A general Court-Martial shall not consist of less than thirteen commissioned officers, and the President of such Court-Martial, shall not be the commander in chief, nor commanding officer of the troops in service, or garrison, where the offender shall be tried, nor under the degree of a field-officer. General courts-martial.—how many members to consist of.

ART. *thirty-eighth.* The members of Courts-Martial, shall, when belonging to different corps, take rank, as is herein before directed when on other duty. Members, how ranked.

ART. *thirty-ninth.* Some person shall be appointed by the commanding officer, who shall order the Court-Martial to prosecute in the name of the Commonwealth of *Massachusetts*; and in trials of offenders, such person shall administer to each member the following oath: Members to be sworn.

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you, between the Commonwealth of *Massachusetts*, and the prisoner to be tried; that you will duly administer justice according to the rules and articles for governing the troops of the said Commonwealth, without partiality, favour, or affection; and if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the Court, until it shall be approved of by the commanding officer; and that you will not, upon any account, at any Form of the oath.

time whatſoever, diſcloſe or diſcover the vote or opinion of any particular member of the Court-Martial, unleſs required to give evidence thereof, as a witneſs by a court of juſtice, in a due courſe of law.

So help you GOD.

Perſon who proſecutes, to be ſworn.

Which oath being adminiſtered to the members of the Court, the Preſident ſhall adminiſter the following oath to the perſon proſecuting as aforeſaid.

Form of the oath.

You *A. B.* do ſwear, that you will not upon any account, at any time whatſoever, diſcloſe or diſcover the vote or opinion of any particular member of the Court-Martial, unleſs required to give evidence thereof as a witneſs by a court of juſtice, in a due courſe of law.

So help you GOD.

In giving votes, how to proceed.

ART. *fortieth.* All the members of a Court-Martial are to behave with calmneſs and decency; and in the giving their votes, are to begin with the youngeſt in commiſſion.

Perſons who give evidence, to be ſworn.

ART. *forty-firſt.* All perſons who give evidence before a Court-Martial, ſhall be examined upon oath, which oath ſhall be adminiſtered by the Preſident of the Court-Martial, in the form following.

Form.

You ſwear, the evidence you ſhall give in the cauſe now in hearing, ſhall be the truth, the whole truth, and nothing but the truth.

So help you GOD.

Two thirds to concur, when ſentence of death is given.

ART. *forty-ſecond.* No ſentence of death ſhall be given againſt any offender, by any general Court-Martial, unleſs two thirds of the members ſhall concur therein.

Perſons refuſing to give evidence how puniſhed.

ART. *forty-third.* All perſons called to give evidence in any cauſe, before a Court-Martial, who ſhall refuſe to give evidence, ſhall be puniſhed for ſuch refuſal at the diſcretion of ſuch Court-Martial.

Trials,—how carried on.

ART. *forty-fourth.* No field officer ſhall be tried by any perſon under the degree of a captain, nor ſhall any proceedings, or trials be carried on, excepting between the hours of eight in the morning and three in the afternoon, except in caſes which require an immediate example.

Sentences to be reported to the commanding officer.

ART. *forty-fifth.* No ſentence of a Court-Martial ſhall be put in execution until after report ſhall be made to the commanding officer, where the Court-Martial ſhall be held, and his orders be iſſued for carrying ſuch ſentence into execution.

Regimental courts-martial may be held.

ART. *forty-ſixth.* The commiſſioned officers in any regiment, may by the appointment of their colonel or commanding officer, hold regimental Courts-Martial, for the enquiring into ſuch diſputes or criminal matters as may come before them, and for inflicting corporal puniſhment for ſmall offences, and ſhall give judgment by the majority of voices; but no ſentence ſhall be executed 'till the commanding

manding officer (not being a member of the Court-Martial) ſhall have confirmed the ſame.

ART. *forty-ſeventh.* No regimental Court-Martial ſhall conſiſt of leſs than five officers, excepting in caſes where that number cannot be conveniently aſſembled, when three may be ſufficient; who ſhall likewiſe determine upon the ſentence by the majority of voices.

To conſiſt of not leſs than five officers.

ART. *forty-eight.* Any officer commanding in a fort, caſtle, barrack, or elſewhere, where the corps under his command, conſiſts of detachments from different regiments, or of an independent company or companies, may aſſemble Courts-Martial for the trial of offenders, in the ſame manner, as if they were regimental, whoſe ſentence ſhall not be executed until it ſhall be confirmed by the ſaid commanding-officer.

Any commanding officer of a fort, caſtle, &c. may aſſemble courts-martial.

ART. *forty-ninth.* No perſon whatſoever ſhall uſe menacing words, ſigns or geſtures, in the preſence of a Court-Martial, then ſitting, or ſhall cauſe any diſorder or riot, ſo as to diſturb their proceedings, on the penalty of being puniſhed at the diſcretion of the ſaid Court-Martial.

Penalty for diſturbing courts-martial.

ART. *fiftieth.* To the end, that offenders may be brought to juſtice, whenever any officer or ſoldier ſhall commit a crime, deſerving puniſhment, he ſhall by his commanding-officer, if an officer, be put in arreſt; if a non-commiſſioned officer or ſoldier, be impriſoned, until he ſhall be either tried by a Court-Martial, or ſhall be lawfully diſcharged by proper authority.

Offenders, how proceeded with, previous to trial.

ART. *fifty-firſt.* No officer or ſoldier, who ſhall be put in arreſt or impriſonment, ſhall continue in his confinement, more than eight days, or until ſuch time as a Court-Martial can be conveniently aſſembled.

Not to continue in confinement, more than eight days.

ART. *fifty-ſecond.* No officer commanding a guard, or provoſt-martial, ſhall refuſe to receive or keep any priſoner committed to his charge by any officer belonging to the forces of this Commonwealth; which officer ſhall at the time of commitment, deliver an account in writing, ſigned by himſelf, of the crime, with which the priſoner is charged.

An account of the crime to be given, at time of commitment.

ART. *fifty-third.* No officer commanding a guard, or provoſt-martial, ſhall preſume to releaſe any priſoner committed to his charge, without proper authority for ſo doing, nor ſhall he ſuffer any priſoner to eſcape, on the penalty of being puniſhed for it, by the ſentence of a Court-Martial.

Penalty for releaſing priſoners without authority.

ART. *fifty-fourth.* Every officer or provoſt-martial, to whoſe charge priſoners ſhall be committed, is hereby required, within twenty-four hours after ſuch commitment, or as ſoon as he ſhall be releaſed from his guard, to give in writing, to the colonel of the regiment, to which the priſoner belongs (where the priſoner is confined upon the guard belonging to the ſaid regiment, and his offence only relates to the neglect of duty in his own corps) or to the commander in chief, their names, their crimes, and the names of the officers who committed them, on the penalty of his being puniſhed

Provoſt-martials, &c. required to give in an account of the names, crimes, &c. of priſoners.

puniſhed for his diſobedience or neglect, at the diſcretion of a Court-Martial.

Officers under arreſt, leaving confinement, to be caſhiered.

ART. *fifty-fifth.* If any officer under arreſt, ſhall leave his confinement before he ſhall be ſet at liberty by the officer who confined him or by a ſuperiour power, he ſhall be caſhiered for ſuch his offence.

Officers convicted of unbecoming behaviour, to be diſcharged.

ART. *fifty-ſixth.* Whatſoever commiſſioned officer ſhall be convicted before a general Court-Martial, of behaving in a ſcandalous, infamous manner, ſuch as is unbecoming the character of an officer and a gentleman, ſhall be diſcharged from the ſervice.

Maſſachuſetts artillery, to be governed by the aforeſaid rules.

ART. *fifty-ſeventh.* All officers, conductors, gunners, matroſſes, drivers, or any other perſon whatſoever, receiving pay or hire, in the ſervice of the *Maſſachuſetts* artillery, ſhall be governed by the aforeſaid rules and articles; and ſhall be ſubject to be tried by Courts-Martial, in like manner with other officers and ſoldiers.

Courts-martial may conſiſt of their own officers, in ſome caſes.

ART. *fifty-eighth.* For differences ariſing amongſt themſelves, or in matters relating to their own corps, the Courts-Martial may be compoſed of their own officers; but where a ſufficient number cannot be aſſembled, or in matters wherein other corps are intereſted, the officers of artillery ſhall ſit in Courts-Martial with the officers of other corps.

No ſentence of death to be paſſed, except in caſes expreſſed.

ART. *fifty-ninth.* No perſon ſhall be ſentenced ſo ſuffer death, except in the caſes expreſſly mentioned in the foregoing articles, nor ſhall more than thirty-nine ſtripes be inflicted on any offender for any one offence.

Field officers to appoint perſons to receive fines, &c.

ART. *ſixtieth.* The field officers of each and every regiment, ſhall appoint ſome ſuitable perſon, belonging to ſuch regiment, to receive ſuch fines as may ariſe within the ſame, for any breach of any of the foregoing articles; and ſhall direct the ſame to be properly applied to the relief of ſuch ſick, wounded or neceſſitous ſoldiers as belong to ſuch regiment; and ſuch perſon ſhall account with ſuch officer for all fines received, and the application thereof.

Crimes not mentioned in theſe articles, may be taken cognizance of.

ART. *ſixty-firſt.* All crimes not capital, and all diſorders and neglects, which officers and ſoldiers may be guilty of, to the prejudice of good order and military diſcipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental Court-Martial, according to the nature and degree of the offence, and be puniſhed at their diſcretion.

Any officer or ſoldier, accuſed of a crime puniſhable by the known laws of the land—

ART. *ſixty-ſecond.* Whenever any officer or ſoldier ſhall be accuſed of a capital crime, or of having uſed violence or committed any offence againſt the perſon or property of the good people of this or either of the United States, ſuch as is puniſhable by the known laws of the land, the commanding officer and officers of every regiment, troop or party, to which the perſon or perſons ſo accuſed ſhall belong, are hereby required upon application duly made by or in behalf of the party or parties injured, to uſe his utmoſt endeavours to deliver over ſuch accuſed perſon or perſons to the civil magiſtrate, and likewiſe to be aiding and aſſiſting to the officers of

juſtice

juſtice in apprehending and ſecuring the perſon or perſons ſo accuſed, in order to bring them to trial. And if any commanding officer or officers ſhall willfully neglect, or ſhall refuſe upon the application aforeſaid, to deliver over ſuch accuſed perſon or perſons to the civil magiſtrate, or to be aiding and aſſiſting to the officers of juſtice, in apprehending ſuch perſon or perſons, ſuch officer or officers ſo offending, ſhall be caſhiered.

To be delivered over to the civil magiſtrate.

[This act paſſed *October* 24, 1786.]

Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

Miſcellaneous.

An Act for eſtabliſhing a Salary of a fixed and permanent Value for his Excellency the Governour.

Preamble. *WHEREAS the conſtitution of this Commonwealth provides, that amongſt the firſt acts of the General Court, after the commencement of the conſtitution, an eſtabliſhment ſhall be made for an honourable ſtated ſalary, of a fixed and permanent value, for the Governour of this Commonwealth:*

Governour's ſalary to be eleven hundred pounds. I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſum of *eleven hundred pounds* in ſpecie, or bills of credit equivalent, be, and it hereby is eſtabliſhed as the annual ſalary of the Governour for the time being, and a proportionable ſum for a leſs time, in full for his ſervices as Governour, to be paid out of the publick treaſury, to enable him to maintain the dignity of his office.

Governour not entitled to any reward, fee, or perquiſite. II. *And be it further enacted,* That the Governour ſhall not be entitled to any reward, fee, or perquiſite, in addition to the ſalary which ſhall be allowed him by any act or acts of the Legiſlature of this Commonwealth.

[This act paſſed *February* 8, 1781.]

An Act for eſtabliſhing Salaries of a fixed and permanent Value for the Juſtices of the Supreme Judicial Court.

WHEREAS the conſtitution of this Commonwealth provides, that an eſtabliſhment ſhould be made for an honourable ſtated ſalary, of a fixed and permanent value for the Juſtices of the Supreme Judicial Court : Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſum of *three hundred and twenty pounds* be and hereby is eſtabliſhed as the annual ſalary of the Chief Juſtice of the Supreme Judicial Court for the time being; and that the ſum of *three hundred pounds* be and hereby is eſtabliſhed as the annual ſalary of each of the other Juſtices of the Supreme Judicial Court for the time being; the ſame to be paid in quarterly payments to the ſaid Juſtices reſpectively, out of the treaſury of this Commonwealth, and to be conſidered as an adequate ſalary for the ſervices of their office, without the addition of any fee or perquiſite whatever. Salaries for the Juſtices of the Supreme Judicial Court eſtabliſhed. To be paid in quarterly payments.

II. *And be it further enacted by the authority aforeſaid,* That the ſums mentioned in this act be computed in ſilver at *ſix ſhillings* and *eight pence* per ounce, and payable either in ſilver or bills of publick credit equivalent thereto.

[This act paſſed *February* 12, 1781.]

An Act for encouraging the Killing of Wolves.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That whoſoever ſhall hereafter within this Commonwealth, kill any grown wolf or wolf's whelp (other than ſuch as ſhall be taken out of the belly of any bitch wolf) and bring the head thereof unto the conſtable of the town in which ſuch wolf or wolf's whelp ſhall be killed, or to the conſtable of the town next adjacent unto the place of killing ſuch wolf or wolf's whelp, without the bounds of any townſhip, the conſtable, in preſence of one or more of the ſelectmen, ſhall cut off both the ears of the ſame, and cauſe them to be burned. And ſuch ſelectman or men, and conſtable, ſhall give the party a receipt for the ſaid head, expreſſing whether it be a grown wolf, or a whelp, and upon producing ſuch receipt, the party ſhall be paid and allowed by the Treaſurer of ſuch town, out of the town treaſury, the ſum of *four pounds* for every head of a grown wolf by him killed, and the ſum of *one pound* for every wolf's whelp; and all ſuch ſum and ſums of money ſo paid out of any town treaſury in manner aforeſaid, ſhall be paid and allowed to ſuch town, by the Treaſurer and Receiver-General of this Commonwealth. Wolves killed &c. The conſtable of the town to cut off both the ears of the ſame, in the preſence of the ſelectmen. Selectmen and conſtable to give a receipt to the party. Bounty.

II.

Certificates to be returned to the Treſurer.

II. *And be it further enacted by the authority aforeſaid*, That all certificates of ſuch payments to be returned to the Treaſurer and Receiver-General, ſhall be in the form following, *that is to ſay*:

Form.

To the Treaſurer of the Commonwealth of Maſſachuſetts.

THIS certifies that there hath been allowed and paid out of the town ſtock of the ſum of for grown wolves, and the ſum of for wolves' whelps, killed in or near unto ſaid town, and within this Commonwealth, ſince the day of laſt, and the heads thereof brought unto a conſtable of ſaid town, and the ears cut off and burnt in the preſence of one or more of the ſelectmen of ſaid town, as the law directs, and ſo certified, amounting in the whole to the ſum of which you are deſired to allow to ſaid town, by paying the ſame to Treaſurer of ſaid town.

Dated at aforeſaid, this day of 17

} Selectmen of

Town Treaſurer.

Repealing all laws heretofore made reſpecting wolves.

III. *And be it further enacted by the authority aforeſaid*, That all the laws of this Commonwealth heretofore made reſpecting wolves or wolves' whelps, ſo far as they relate to the ſame, be, and hereby are repealed and declared to be null and void.

[This act paſſed *February* 21, 1783.]

An Act to prevent Damages being done upon the improved Lands adjoining to *Connecticut* River, by Reaſon of Timber being left thereon, by the Spring Floods; and for fixing a Time for the Owners to remove it.

Preamble.

WHEREAS conſiderable damages have been ſuſtained by reaſon of timber being left upon the improved lands adjoining to Connecticut *river, within this Commonwealth*:

When timber ſhall be left upon any improved land——the owners to record the ſame,

Entitled to damages.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That where any timber ſhall be left upon any improved land adjoining to *Connecticut* river by the ſpring floods, (all iſlands in the river excepted) the owner of the land upon which the timber is left, in caſe he ſhall cauſe to be recorded in the book of records within the ſame town the marks and length of ſuch timber, and the place where it is ſo left by the flood, ſhall be entitled to *one ſhilling* as a reaſonable damage he may ſuſtain for each ſtick of timber ſo left on his land, *two pence* of which to be given to the town-clerk for recording, who is hereby directed to record the ſame.

Provided nevertheleſs, If the owner of the timber ſhall cauſe it to be removed by the fifteenth of *May* next ſucceeding after ſuch timber

timber is left by the flood, no conſideration ſhall be allowed to the owner of the land for any damage.

II. *And be it further enacted by the authority aforeſaid,* That if the owners of ſuch timber ſhall not cauſe it to be removed within twelve months from the date of the record, in that caſe the ſame ſhall be adjudged to be the property of the owner of the land.

[This act paſſed *April* 28, 1781.]

An Act in addition to an Act, entitled, "an Act to prevent Damages being done upon the improved Lands adjoining to *Connecticut* River, by reaſon of Timber being left thereon by the Spring Floods; and for fixing a Time for the Owners to remove it; made in the Year one Thouſand ſeven Hundred and Eighty-one.

WHEREAS captain Aſahel Gunn, *hath repreſented to this Court, that he ſuſtains great damage by timber which is brought on to his land in an iſland, in* Connecticut *river, lying between* Deerfield *and* Montague, *commonly known by the name of* Smead's-Iſland. Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the aforeſaid act, and every clauſe and thing therein contained, ſhall be extended to the aforeſaid iſland, commonly called *Smead's-Iſland,* the owner or owners thereof obſerving the injunctions contained in ſaid act, and cauſing the marks on the timber to be recorded in the book of records of the town of *Montague.*

[This act paſſed *July* 8, 1786.]

An Act for the Purpoſe of ſecuring to Authors the excluſive Right and Benefit of publiſhing their Literary Productions, for Twenty-one Years.

WHEREAS the improvement of knowledge, the progreſs of civilization, the publick weal of the Commonwealth, and the advancement of human happineſs, greatly depend on the efforts of learned and ingenious perſons in the various arts and ſciencs: As the principal encouragement ſuch perſons can have to make great and beneficial exertions of this nature, muſt exiſt in the legal ſecurity of the fruits of their ſtudy and induſtry to themſelves, and as ſuch ſecurity is one of the natural rights of all men, there being no property more peculiarly man's own than that which is produced by the labour of his mind: Preamble.

 Therefore,

Therefore, to encourage learned and ingenious perſons to write uſeful books for the benefit of mankind,

Books, &c. the ſole property of authors.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all books, treatiſes, and other literary works, having the name or names of the author or authors thereof printed and publiſhed with the ſame, ſhall be the ſole property of the ſaid author or authors, being ſubjects of the United States of *America*, their heirs and aſſigns, for the full and compleat term of twenty-one years, from the date of their firſt publication.

Perſons prohibited printing, &c. any literary productions.

II. *And be it further enacted by the authority aforeſaid,* That if any perſon or perſons ſhall print, re-print, publiſh, ſell, or expoſe to ſale, or ſhall cauſe to be printed, re-printed, publiſhed, ſold, or expoſed to ſale, any book, treatiſe, or other literary work, not yet printed, written by any ſubject of the United States of *America*, whoſe name, as author, ſhall have been thereto prefixed, without conſent of the author or authors, or their aſſigns, during ſaid term, ſhall forfeit and pay a ſum not exceeding *three thouſand pounds*, nor leſs than *five pounds*, to the uſe of ſuch author or authors, or their aſſigns; to be recovered by action of debt in any court of record proper to try the ſame. *Provided always,* That every author of ſuch book, treatiſe, or other literary work, ſhall, in order to his holding ſuch ſole property in them, preſent two printed copies of each and every of them to the library of the univerſity at *Cambridge*, for the uſe of the ſaid univerſity; and prior to his recovery of the ſaid forfeiture, or any part thereof, ſhall produce in open Court where ſuch action ſhall be tried, a receipt of ſuch book, treatiſe, or other literary work, from the librarian of the ſaid univerſity for the time being. *Provided alſo,* That this act ſhall not be conſtrued to extend in favour or for the benefit of any author or authors, ſubject or ſubjects of any other of the United States, until the State or States of which ſuch authors are ſubjects, ſhall have paſſed ſimilar laws, for ſecuring to authors the excluſive right and benefit of publiſhing their literary productions.

Penalty.

Proviſo.

[This act paſſed *March* 17, 1783.]

An Act for the better ſecuring, and rendering more effectual, Grants and Donations to pious and charitable Uſes.

Preamble.

WHEREAS many grants and donations have heretofore been made by ſundry well diſpoſed perſons, in and by ſuch expreſſions and terms as plainly ſhow it was the intent and expectation of ſuch grantors and donors, that their ſeveral grants and donations ſhould take effect, ſo as that the eſtates granted ſhould go in ſucceſſion; but doubts have ariſen in what caſes ſuch donations and grants may operate ſo as to go in ſucceſſion: for aſcertaining whereof,

I.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the deacons of all the ſeveral proteſtant churches, not being epiſcopal churches, and the church wardens of the ſeveral epiſcopal churches, are, and ſhall be deemed ſo far bodies corporate, as to take in ſucceſſion all grants and donations, whether real or perſonal, made either to their ſeveral churches, the poor of their churches, or to them and their ſucceſſors, and to ſue and defend in all actions touching the ſame; and whenever the miniſters, elders or veſtry, ſhall in ſuch original grants or donations have been joined with ſuch deacons or church wardens as donees, or grantees in ſucceſſion, in ſuch caſes, ſuch officers and their ſucceſſors, together with the deacons or church wardens, ſhall be deemed the corporation for ſuch purpoſes as aforeſaid; and the miniſter or miniſters of the ſeveral proteſtant churches, of whatever denomination, are and ſhall be deemed capable of taking in ſucceſſion any parſonage land or lands, granted to the miniſter and his ſucceſſors, or to the uſe of the miniſters, and of ſuing and defending all actions touching the ſame; ſaving that nothing in this act ſhall be conſtrued to make void any final judgment of any Court of Common Law or Probate; ſaving alſo that no alienation of any lands belonging to churches hereafter made by the deacons, without the conſent of the church, or a committee of the church for that purpoſe appointed, or by church wardens, without the conſent of the veſtry, ſhall be ſufficient to paſs the ſame; and that no alienation hereafter made by miniſters, of lands by them held in ſucceſſion, ſhall be valid any longer than during ſuch alienors continuing miniſters, unleſs ſuch miniſters be miniſters of particular towns, diſtricts or precincts, and make ſuch alienation with their conſent reſpectively, or unleſs ſuch miniſters ſo aliening be miniſters of epiſcopal churches, and the ſame be done with the conſent of the veſtry; and the ſeveral churches in this Commonwealth, not being epiſcopal churches, are hereby empowered to chooſe a committee to call the deacons or other church officers to an account; and if need be, commence and proſecute any ſuits touching the ſame, and alſo to adviſe and aſſiſt ſuch deacons in the adminiſtration of the affairs aforeſaid.

Deacons and church wardens deemed ſo far bodies corporate as to take in ſucceſſion all grants and donations.

When miniſters, elders and veſtry are joined,

In ſuch caſes, to be deemed the corporation for ſuch purpoſes.

II. *And be it further enacted,* That the income of the grants made, or to be made to any one ſuch body politick, for pious and charitable uſes, ſhall not exceed the ſum of *three hundred pounds* per annum.

Income of the grants not to exceed 300l. per annum.

[This act paſſed *February* 20, 1786.]

An Act Directing the Method for laying out Highways.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That the ſelectmen of the ſeveral towns in this government, are hereby authorized

authorized and empowered, either perſonally, or by ſuch other perſon or perſons, as they ſhall appoint, to lay out within their reſpective towns, particular and private ways, for the uſe of ſuch town only; or for the uſe of one or more individuals thereof, or proprietors therein; and if any particular perſon or perſons, who are owners of the land through which ſuch private roads ſhallbe laid out, be injured thereby, he or they ſhall receive ſuch recompence, as the party intereſted, and the ſelectmen ſhall agree upon to be paid by the town, or the individual perſon or perſons, for whoſe uſe the road is laid out, or as ſhall be ordered by the Juſtices in their General Seſſions of the Peace, upon an enquiry into the ſame, by a Jury to be ſummoned for that purpoſe, or by a ſpecial committee, if the parties agree thereunto.

Selectmen empowered to lay out publick and private ways.

Provided always, That no private way laid out by the ſelectmen, or their order, as aforeſaid, ſhall be eſtabliſhed as ſuch, until the ſame has been reported to the town, at ſome publick meeting of the inhabitants thereof, regularly notified and warned, and by them approved and allowed.

Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That if the ſelectmen ſhall, unreaſonably delay, or refuſe to lay out, or cauſe to be laid out, any ſuch private way, as before deſcribed, being thereunto requeſted in writing, by one or more of the inhabitants, or proprietors of land in ſuch town, then the Court of General Seſſions of the Peace for the ſame county, at any ſeſſion thereof, within one year, if the requeſt appear to them reaſonable, may cauſe the ſame private way to be laid out at the coſts of the perſons applying, by a committee of three diſintereſted freeholders, which committee ſhall eſtimate the damages occaſioned thereby (if any there be) as well as aſcertain the place and courſe of the ſaid private way. The damages to be paid by the town, if it be of general benefit, otherwiſe by the individual or individuals for whoſe uſe and benefit the way is laid out. And the Juſtices of the reſpective Courts of General Seſſions of the Peace, upon application to them made by any party aggrieved, at the continuance of any private way, may order and direct a diſcontinuance thereof, after notifying and hearing the parties intereſted therein, if they ſhall thereupon adjudge and determine ſuch diſcontinuance reaſonable.

Court of General Seſſions may cauſe ſuch private ways to be laid out, if ſelectmen refuſe.

III. *And be it further enacted by the authority aforeſaid*, That when any town ſhall unreaſonably delay or refuſe, to approve and allow of any private way, laid out by the ſelectmen thereof, or their order, and put the ſame on record, any perſon or perſons aggrieved by ſuch delay or refuſal, may apply to the Court of General Seſſions of the Peace, for the ſame county, within twelve months after ſuch refuſal or delay; and the ſame Court, after hearing the town thereon, may accept and approve of the ſaid private way, as laid out by the ſelectmen, and direct the ſame to be recorded in the town-book; or they may order the private way petitioned for, to be laid out, by a committee of three diſintereſted freeholders, to be by them appointed for that purpoſe, which committee ſhall be under ſimilar directions and obligations as to locating and eſtimating the damages occaſioned

When towns unreaſonably delay to approve or allow of any private way, &c the perſons aggrieved may apply to the Court of Seſſions.

occaſioned thereby, as in this act is preſcribed for a committee of five, in locating or altering a county highway.

IV. *And be it further enacted by the authority aforeſaid*, That when a new highway, or common road, from town to town, or place to place, ſhall be wanting, or where an highway or common road already laid out, ſtated and eſtabliſhed, may or can with greater conveniency be turned or altered, upon application made to the Court of General Seſſions of the Peace, within the ſame county, and it being determined by them to be of common convenience or neceſſity to have ſuch new way laid out, or old way altered, the ſaid Court are hereby authorized and empowered, by warrant under the ſeal thereof, to appoint a committee of five diſintereſted ſufficient freeholders, in the ſame county, to lay out ſuch highway or road; which committee ſhall give ſeaſonable notice to all perſons intereſted, of the time and place of their meeting; and they ſhall be under oath to perform the ſaid ſervice, according to their beſt ſkill and judgment, with moſt convenience to the publick, and leaſt prejudice or damage to private property. And they ſhall aſcertain the place and courſe of ſaid road, in the beſt way and manner they can; which having done, they or the major part of them ſhall make return thereof, under their hands and ſeals, to the next Court of General Seſſions of the Peace to be held in the ſame county, after the ſaid ſervice is performed; to the end the ſame may be accepted, allowed and recorded, and afterwards known for a publick highway.

When a highway or common road, from town to town, ſhall be wanting, application may be made to the Court of Seſſions.

Provided always, That if any perſon be damaged in his property, by the laying out or altering ſuch highway, the town or diſtrict where the ſame is, ſhall make ſuch perſon or perſons reaſonable ſatisfaction, according to the eſtimation of the committee or the major part of them who laid out the ſame; and ſaid committee are empowered and required, under oath, to eſtimate the ſame, and make return thereof as aforeſaid. And if any perſon find himſelf aggrieved by the doings of the ſaid committee, in locating ſaid way, or in eſtimating damages, he may apply to the Court of General Seſſions of the Peace, provided ſuch application be made to the ſaid Court that ſhall be held in the ſame county, next after the acceptance of ſuch return; and ſaid Court is hereby empowered to hear and finally determine the ſame, by a jury under oath, to be ſummoned by the ſheriff or his deputy for that purpoſe, if the perſon complaining deſires the ſame, or by a new committee, if the perſon complaining and the agent for the town or diſtrict in which the way is laid out, can agree thereon; and if the jury or committee agreed upon as aforeſaid, who are to be under oath, ſhall not alter ſaid way, or increaſe the damages, the perſon complaining ſhall be at all the coſts incurred on that occaſion, to be taxed againſt him by ſaid Court, otherwiſe, ſuch coſts ſhall be paid by the county, and the increaſe of damages, ſhall be paid by the town or diſtrict in which ſuch ways is located.

Proviſo, in caſe any perſon ſhall be damaged in property.

Perſons aggrieved may apply to the Court of General Seſſions.

V. *And be it further enacted by the authority aforeſaid*, That the verdict of ſuch jury, or the report of the committee agreed up-

Verdict of a Jury or report of a committee, with reſpect to ſuch damages, may be final.

on as aforeſaid, being made under their hands and ſeals to ſaid Court, and by them accepted and recorded, ſhall conclude the perſon or perſons complaining, with reſpect to the damages, and alſo finally fix and determine the place of ſuch road or highway.

Court may order the damages to be paid out of the treaſury of the town.

VI. *And be it further enacted,* That the Court of General Seſſions of the Peace, may order the payment of ſuch ſum or ſums of money, as ſhall be aſſeſſed in damages, to be paid by any town or diſtrict, in conſequence of this act, out of the treaſury thereof; and in default of payment after a reaſonable time, may levy the ſame by warrant of diſtreſs, upon the perſonal property of the inhabitants, to the uſe and benefit of the perſon or perſons to whom the damages may be awarded.

What buildings and fences ſhall be conſidered as boundaries, and what as nuiſances, &c.

VII. *And be it further enacted by the authority aforeſaid,* That where buildings or fences have been erected, fronting upon, or againſt any training field, burying place, common landing place, highway, private way, ſtreet, lane, or alley, in any town, diſtrict, pariſh or precinct in this government, where from length of time, or otherwiſe, the breadth or quantity thereof is not known, or can be made certain by the records, or by any other boundaries, and ſuch buildings or fences have been upheld, maintained and continued, for more than forty years; ſuch fences or buildings ſhall be deemed and taken to be the true ancient boundaries thereof; but no length of time (under three ſcore years) ſhall juſtify the continuance of a fence, or building, on any town or private way, or on any publick highway, a common training field, burying place, landing place, or other piece of land appropriated for the general uſe, eaſe, or convenience of the community at large, or for the inhabitants of any particular county, town, diſtrict, pariſh or precinct; but the ſame may be removed, by order of the Court of General Seſſions of the Peace, or the Supreme Judicial Court, as a nuiſance, upon the preſentment of a Grand Jury.

[This act paſſed *February* 27, 1787.

An Act making Proviſion for the Repair and Amendment of Highways.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That all highways, town-ways, cauſeways, and bridges, lying and being within the bounds of any town, ſhall be kept in repair and amended, from time to time, that the ſame may be ſafe and convenient for travellers, with their horſes, teams, carts, and carriages, at all ſeaſons of the year, at the proper charge and expence of the inhabitants of ſuch town (where other ſufficient proviſion is not made therefor) and there ſhall be choſen two or more ſuitable perſons in each town, at the annual meeting in *March* or *April*, who ſhall be denominated ſurveyors of highways, to be notified and ſworn in like

Surveyors of highways ſhall be choſen annually.

like manner as other officers of the ſame town, and in caſe of refuſal to ſerve, ſhall forfeit and pay the ſum of *three pounds*, to the uſe of ſuch town, diſtrict or plantation ; provided, no perſon ſhall be held and obliged to ſerve more than one year in three years ; and the ſurveyors thus choſen and ſworn, ſhall have full power and authority to cut down, lop off, dig up and remove all ſorts of trees, buſhes, ſtones, fences, rails, gates, bars, incloſures or other matter or thing, that ſhall any way ſtraiten, hurt, hinder or incommode the highway or town-way, and alſo to dig for ſtone, gravel, clay, marle, ſand or earth, in any land not planted or incloſed, and the materials thus dug up, to remove to ſuch place or places in the highways, for the repair and amendment thereof, as they ſhall determine neceſſary. Their power.

Provided always, That no ſurveyor of highways ſhall cauſe any water courſe, occaſioned by the waſh of any highway or town-way, to be ſo conveyed by the ſide of ſuch highway, as to incommode any perſon's houſe, ſtore, ſhop or other building, or to obſtruct any perſon or perſons in the proſecution of his or her buſineſs or occupation, without the approbation and conſent of the ſelectmen of ſuch town or other place, ſignified in writing to ſuch ſurveyor ; and any perſon or perſons who may conſider him or herſelf to be aggrieved by ſuch water courſe, may complain to the ſelectmen of ſuch town or other place ; and the ſelectmen, on receiving ſuch complaint, ſhall proceed to view ſuch water courſe ſo complained of, and after attending to the circumſtances of the ſame, ſhall, if they think it reaſonable, direct ſuch ſurveyor to alter the ſaid water courſe, in ſuch way and manner as they ſhall think juſt and proper ; and when the highways are blocked up, or incumbered with ſnow, the ſurveyors ſhall forthwith cauſe ſo much thereof to be removed, or trod down, as will render the roads paſſable. Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That the ſelectmen or aſſeſſors of each town, are authorized, empowered and directed, to aſſign and appoint in writing, annually, to the ſurveyors, their ſeveral limits and diviſions of the highways and town-ways, for repair and amendment, unto which aſſignments the ſaid ſurveyors are directed to obſerve and conform themſelves. Selectmen or aſſeſſors, to aſſign limits to the ſurveyors.

III. *And be it further enacted by the authority aforeſaid*, That each town, at ſome publick meeting of the inhabitants thereof, regularly notified and warned, ſhall vote and raiſe ſuch ſum of money, to be expended in labour and materials on the highways and town-ways, as they ſhall determine neceſſary for the purpoſe : And the aſſeſſors ſhall aſſeſs the ſame on the polls and rateable eſtates, perſonal and real, of the inhabitants, reſidents and non-reſidents of their town, as other town charges are by law aſſeſſed, and deliver to each ſurveyor a liſt of the perſons and the ſums at which they are ſeverally aſſeſſed, for his limits. And the ſurveyor ſhall give reaſonable notice (in writing if deſired) to each perſon in his liſt, of the ſum he is aſſeſſed to the highways and town-ways, and alſo to the inhabitants within his diſtrict, aſſeſſed as aforeſaid, ſix days notice (extraordinary, caſualty excepted) of the times and places he ſhall appoint for providing materials and labouring ; to the end, each Each town ſhall raiſe ſuch ſum as may be neceſſary for the repair of highways. Manner of aſſeſſing the ſame.

each perſon may have opportunity to work on the highways and town-ways, in perſon or by his ſubſtitute, or with his oxen, horſes, cart and plough, at the rates and prices the town ſhall affix to ſuch labour, to the full amount of the ſum at which he is aſſeſſed; or he may pay the ſurveyor in money the ſum he is aſſeſſed, in which caſe, the ſurveyor ſhall carefully expend the ſums thus paid, in labour and materials, for repairing the highways and town-ways in his limits, according to his beſt diſcretion. And the ſurveyor, at the expiration of his term, ſhall render to the aſſeſſors, for the time being, a liſt of ſuch perſons as ſhall have been deficient, (if any ſuch there be) in working out their highway rate; or otherways paying him the ſum aſſeſſed therefor; which deficient ſums, ſhall by the aſſeſſors be put in a diſtinct colum, in the next aſſeſſment for the town tax, and collected by the conſtable or collector thereof, as other town taxes are collected and paid into the town treaſury, for the uſe of the town.

When the ſum aſſeſſed, ſhall be inſufficient, ſurveyors power in ſuch caſes.

IV. *And be it further enacted by the authority aforeſaid*, That when the ſum appropriated and aſſeſſed for the repair of the highways and town-ways, in the limits of any particular ſurveyor, ſhall not fully anſwer, or be inſufficient for that purpoſe, it ſhall be lawful for the ſurveyor with the conſent of the ſelectmen, or the major part of them, where ſuch deficiency happens, to employ ſuch of the inhabitants of the town, upon the repair of the ways in his limits, as ſhall make up that deficiency; and the perſons thus employed ſhall be equitably paid out of the town treaſury therefor.

Incumbrances in or acroſs any roads, &c. may be pulled down or removed by any perſon,

V. *And be it further enacted by the authority aforeſaid*, That it ſhall be lawful for any perſon to pull down and remove any gates, rails, bars or fence, upon or acroſs any highway or county road, unleſs ſuch gate, bars or fence have been erected or continued by the leave and licence of the Court of General Seſſions of the Peace, for the ſame county; and if any ſuch incumbrance be in or acroſs any private way, the ſame may be removed by the order of ſome Juſtice of the Peace, of the ſame county, unleſs the gate or bars were erected or continued by the leave of the town, or the perſon or perſons for whoſe particular uſe and benefit the private way was laid out: And any perſon aggrieved by the removal of ſuch gate, bars or fence, ſhall be relieved at the Court of General Seſſions of the Peace, for the ſame county, if upon examination it ſhall appear, that the ſame were erected or continued by licence or leave as aforeſaid.

When any incumbrance ſhall be adjudged a nuiſance, coſts of proſecution how levied.

VI. *And be it further enacted by the authority aforeſaid*, That when any building, fence, or other incumbrance erected, or continued on any town, or private way, or on any publick highway, a common training-field, burying-place, landing-place, or other piece of land, appropriated for the general uſe, eaſe, or convenience of the community at large, or the inhabitants of any county, town, diſtrict, pariſh or precinct, ſhall, by any Court having cognizance thereof, be adjudged and determined a nuiſance, and ordered to be abated, in caſe the materials of ſuch building, fences or other incumbrance, upon a publick ſale thereof at auction, ſhall be inſufficient to pay the coſts and charges of proſecution and removal; the Court from whence

whence the proceſs for removal ſhall iſſue, ſhall and may order the deficient ſum to be raiſed and levied from the goods and chattles of the perſon or perſons who ſhall be convicted of erecting or continuing the ſame.

VII. *And be it further enacted by the authority aforeſaid*, That if any perſon ſhall loſe a limb, break a bone, or receive any other injury in his perſon, or in his horſe, team, or other property, through any defect, or want of neceſſary repair and amendment of any highway, cauſeway, or bridge; the perſon or perſons injured thereby, ſhall and may recover of the county, town, the perſon or perſons, who are by law obliged to keep the ſame highway, cauſeway, or bridge in repair, in caſe they had reaſonable notice of the defect, double the damages thereby ſuſtained, by a ſpecial action of the caſe, before any Court proper to hear and determine the ſame. And if the life of any perſon ſhall be loſt through the deficiency of the way, cauſeway, or bridge, or for want of rails on any bridge, the county, town, or perſons who are by law obliged to repair and amend the ſame, ſhall be liable to be amerced in *one hundred pounds*, to be paid to the executor or adminiſtrator of the deceaſed, for the uſe of the heirs, deviſees or creditors, upon a conviction before the Court of General Seſſions of the Peace, or Supreme Judicial Court, on a preſentment or indictment of the Grand Jury. *Provided*, The county, town, or other perſon or perſons, who of right ought to maintain and keep the ſame in repair, had been previouſly notified of ſuch want of repair, and amendment, in writing, under the hands of two or more credible witneſſes, or by the preſentment of the Grand Jury, or by information of the Attorney-General, or the perſon acting for the government in his abſence, filed in the Court of General Seſſions of the Peace, or the Supreme Judicial Court.

Damage happening through defects in ways or bridges, ſhall be made good by the county or town.

Proviſo.

VIII. *And be it further enacted by the authority aforeſaid*, That if any town ſhall neglect to vote or agree upon a ſum, to be aſſeſſed for the expreſs purpoſe of repairing and amending the highways and town-ways, or ſhall not otherwiſe provide for effectually amending and repairing ſuch ways, each ſurveyor ſhall aſſign to the ſeveral perſons in his limits, their rateable proportion of days work, and of cart, team and plough, according to his real and perſonal property, as near as he can, and ſhall aſſign certain days for amending and repairing the ways, having regard to the ſeaſon of the year, and give notice thereof to the perſons in his limits, upwards of ſixteen years of age, and liable by law to be taxed, ſix days at leaſt before the time aſſigned (except in extraordinary caſes) to attend the ſervice with ſuitable tools, and with carts and teams (if any they have) the notice to be in writing and delivered the perſon, or left at his uſual place of abode; and if any perſon being thus notified, ſhall make default of attending and working, by himſelf or other ſufficient perſon in his ſtead, or with his cart and team, as he ſhall be appointed and aſſigned, he ſhall forfeit and pay *five ſhillings* for each day's neglect, and for default of his cart and team with a driver, *ten ſhillings* a day, and in that proportion for a longer or ſhorter ſpace of time, one moiety to the uſe of the town, to be expended on the

If towns neglect to agree upon & aſſeſs a ſum for the repair of the highways, &c. Surveyors to aſſign each perſon his rateable proportion.

To aſſign certain days for working.

Penalty for default of attending & working.

highways and town-ways as the ſelectmen ſhall order, and the other moiety to the uſe of the ſurveyor, to be recovered by complaint, before any Juſtice in the ſame county. *Provided* the ſame be made in one year, after the forfeitures are incurred, and not afterwards, according to the form hereafter preſcribed; in which proſecution, the ſurveyor may be admitted as an evidence, as to the time and manner of notice, and the quantum of labour aſſigned to the adverſe party. And the penalties incurred by ſervants or minors, ſhall be recovered of the parents, maſters, or guardians, under whoſe immediate care and controul they may then be.

Proviſo.

IX. *And be it further enacted by the authority aforeſaid*, That the following ſhall be the form of the ſurveyor's complaint to a Juſtice upon ſuch occaſion, *viz.*

Form of the ſurveyor's complaint to a Juſtice.

To *A. B.* one of the Juſtices of the Peace for the county of *S.* complains *C. D.* of *R.* in the ſame county [*addition*] and one of the ſurveyors of highways in the ſaid town of *R.* for the year duly appointed and ſworn, that *P. D.* of *R.* aforeſaid [*addition*] a perſon by law liable to work on the highways, (or *S. D.* a ſon or ſervant, or ward, as the caſe may be) within the limits aſſigned the complainant, in the ſame town, was aſſeſſed days (or with his cart, team, &c. as the caſe may be) and was duly notified to attend, and work out the ſame on the day or days of yet the ſaid *P. D.* did not appear and work in perſon, nor did he ſend a ſufficient ſubſtitute in his ſtead, but made default therein, whereby he hath forfeited, and ought to pay to the complainant, the ſum of one moiety to the uſe of the ſaid town of *R.* to be expended on the highways and town-ways therein, as the ſelectmen thereof ſhall direct, and the other moiety to the uſe of the complainant: wherefore he prays that the ſaid *P. D.* may be cited to appear, at a ſhort day, to ſhew cauſe (if any he has) wherefore a warrant of diſtreſs ought not to iſſue, to levy the ſaid forfeitures, upon the goods and eſtate of the ſaid *P. D.* and in want thereof on his body, with reaſonable coſts, &c. *C. D.*

Juſtice may iſſue a warrant to notify the reſpondent, &c.

Upon which complaint, the Juſtice may iſſue a warrant to ſome ſworn officer, to notify the reſpondent, at a time and place therein mentioned, to appear and ſhew cauſe (if any he has) wherefore a warrant of diſtreſs ſhould not iſſue. Which warrant may be ſerved by reading the ſame with the complaint annexed to the reſpondent, ſeven days at leaſt before the day aſſigned for a hearing, or leaving an atteſted copy thereof, at the reſpondent's uſual place of abode, ſeven days or more before the day of trial. And if the reſpondent being notified as aforeſaid, ſhall not appear, or appearing, ſhall not in the opinion of the Juſtice (from whoſe determination herein no appeal ſhall be made) ſhew ſufficient cauſe, he ſhall enter up judgment thereon, that a warrant of diſtreſs iſſue for ſuch, or ſo much of the ſums proſecuted for, as ſhall appear forfeited, and coſts. But in caſe the reſpondent ſhall make it appear, that he was unreaſonably aſſeſſed, or that he was not duly notified thereof, or ſhall make any other legal or ſufficient excuſe to exempt him fully from the forfeitures,

If the reſpondent ſhall not appear, &c. a warrant of diſtreſs ſhall iſſue.

feitures, the Juſtice ſhall enter up judgment that the reſpondent be acquitted and diſcharged from the forfeitures, for which he is now proſecuted, and that he recover againſt the complainant his coſts. And the warrant of diſtreſs for levying the forfeitures, when the ſame ſhall appear to be incurred, ſhall run in the form following, *viz.*

S——ſſ.

L. S. *To the ſheriff of the county of* S. *or his deputy, or conſtable of the town of* R. *in ſaid county,*

Form of the warrant.

GREETING.

WHEREAS *P. D.* of *R.* aforeſaid [*addition*] on the day of did not appear before me *A. B.* Eſq. one of the Juſtices of the Peace for the county of *S.* to anſwer the complaint of *C. D.* of ſaid *R.* (*addition*) and one of the ſurveyors of highways for ſaid town, for the year for not working on the highways and town-ways, in the ſaid town, as he was aſſigned by the ſaid *C. D.* who requeſted a warrant of diſtreſs to iſſue, for the ſum of *ſhillings*, incurred by his neglect in that behalf, and for his coſts, agreeably to the ſtatute in that caſe made and provided, although duly ſummoned for that purpoſe [or appearing before me, *A. B.* Eſq. one of the Juſtices of the Peace for the county of *S.* to anſwer to the complaint of *C. D.* of ſaid *R.* *(addition)* and one of the ſurveyors of highways in ſaid town, for the year for not working (in perſon, or with his team and cart, &c.) on the highways and town-ways in ſaid town, as he was aſſigned by the ſaid *C. D.* did not ſhew ſufficient cauſe, wherefore a warrant of diſtreſs ſhould not iſſue, for the ſum of *ſhillings*, incurred by his neglect in that behalf, and for coſts, agreeably to the ſtatute in that caſe made and provided] and judgment was thereupon rendered, that warrant of diſtreſs ſhould iſſue, for *ſhillings*, being the forfeiture thus incurred, one moiety thereof to the uſe of the town of *R.* to be expended on the highways and town-ways therein as the ſelectmen thereof ſhall order, and the other moiety for the uſe of the ſaid *C. D.* and coſt taxed at which judgment is now in full force. You are therefore, in the name of the Commonwealth of *Maſſachuſetts*, hereby commanded, that you cauſe to be paid and ſatisfied in money, to the ſaid *C. D.* by diſtreſs and ſale of the goods and chattels of the ſaid *P. D.* the aforeſaid ſums, amounting in the whole to and *one ſhilling* and *ſix pence* more for this precept, together with your own legal fees (returning the overplus to the ſaid *P. D.* if any there be) and for want of goods and chattels of the ſaid *P. D.* to be by him ſhewn unto you, or found in your precinct, ſufficient to levy the ſums aforeſaid, you are to take the body of the ſaid *P. D.* and him commit to the common goal of the ſaid county of *S.* and the keeper thereof is directed to detain him there until he pay the ſums aforeſaid, with your legal fees, or he be therefrom diſcharged by order of law: Hereof fail not, and make due return of this precept with your doings thereon, unto myſelf, within forty days next coming. Given under my hand and ſeal at *R.* aforeſaid, this day of *Anno Domini*, 17

A. B. Juſtice of the Peace.

And

If ſurveyors neglect their duty.

Forfeiture.

X. *And be it further enacted by the authority aforeſaid*, That each ſurveyor of highways, who ſhall accept the ſaid truſt, and ſhall neglect his duty therein, ſhall forfeit and pay for each neglect, the ſum of *three pounds*, one moiety to him that will proſecute therefor, and the other moiety to the uſe of the town whereof the delinquent is a ſurveyor, to be be recovered by action of debt, before any Juſtice of the Peace for the ſame county.

In caſe inhabitants are fined for deficiency in highways, the ſurveyors ſhall be liable to refund the ſame.

XI. *And be it further enacted by the authority aforeſaid*, That in caſe the inhabitants of any town, ſhall be fined upon the preſentment of the Grand Jury, or upon information of the Attorney-General, or the perſon acting for the government in his abſence, for a deficiency in the highways, the ſurveyor, within whoſe limits the deficient ways are, ſhall be liable to refund the ſame, with all coſts to the ſaid inhabitants, upon an action of the caſe to be brought therefor. Or the ſurveyor of highways may be proſecuted on preſentment or information as aforeſaid, and fined for any deficiency that may ariſe in his limits. And the inhabitants of any town merely as ſuch, ſhall not be excluded from being witneſſes, upon any proſecutions upon this ſtatute, upon a ſuppoſition of being intereſted as members of the corporation.

Proviſo.

Provided nevertheleſs, That nothing in this act ſhall be ſo conſtrued, as to give power to any ſurveyor or other perſons, to remove or pull down any fence which may be lawfully ſet up, or erected upon, or acroſs any way, for the purpoſe of preventing the ſpreading of infectious diſorders.

This act to be in force from and after the firſt day of *September*, one thouſand ſeven hundred and eighty-ſeven.

[This act paſſed *March* 5, 1787.]

An Act for enabling Proprietors of Private Ways and Bridges, to repair them in equal Proportion.

Manner of calling proprietors meetings.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when and ſo often as any number of the proprietors and rightful occupants of any private way or bridge, where there are four, or more than four of them ſhall judge a proprietors meeting neceſſary, three of them applying to a Juſtice of the Peace, within and for the county, where the ſaid way or bridge lies, ſuch Juſtice is hereby authorized, and empowered, to grant a warrant for calling the ſame, or otherwiſe one fourth part of the ſaid proprietors may of themſelves call ſuch meeting; in either caſe to be done by warrant under the hand of the ſaid Juſtice, poſted up in ſome publick place or places, in the town or towns, where the ſaid proprietors, and rightful occupants live reſpectively, ſeven days at leaſt before the time appointed for ſuch meeting, ſignifying the time, place, and buſineſs thereof; and the major part of the proprietors, and rightful occupants ſo aſſembled, ſhall have full power to determine by a major vote,

vote, on any other way of calling meetings in future, and to chuſe a clerk and ſurveyor, who ſhall be ſworn to the faithful diſcharge of their reſpective truſts, as town officers are, and to determine what repairs on the ſaid way or ways, bridge or bridges are neceſſary; and alſo each proprietor's and occupant's proportion of labour, and materials neceſſary for repairing the ſaid way or ways, bridge or bridges; and ſuch ſurveyor ſo choſen and ſworn, ſhall have the ſame power with reſpect to ſuch ways or bridges, as the ſurveyors of highways are by law inveſted with, and ſhall be governed by the ſame rules as are preſcribed by law for their direction; and in caſe of neglect or refuſal of any proprietor or occupant, in attending the ſaid work, by himſelf or other ſufficient perſon in his ſtead, or furniſhing materials when required by the ſaid ſurveyor, neceſſary for the repair of the ſaid ways or bridges, agreeably to the determination of the ſaid proprietors, he or ſhe ſhall be ſubject to the ſame fines and penalties as are provided in caſe of town highways, and to be recovered in the ſame manner.

A ſurveyor, &c. ſhall be choſen.

II. *And be it further enacted*, That if any ſurveyor, choſen as is provided by this act, ſhall refuſe or neglect to accept that truſt, and take the oath aforeſaid, he ſhall forfeit and pay the ſum of *twenty ſhillings*, to be recovered in manner aforeſaid: And all fines and forfeitures incurred by breach of this act ſhall be applied for the uſe of the propriety for repairing the ſaid ways or bridges.

Penalty if any ſurveyor neglects to accept.

[This act paſſed *November* 12, 1787.]

An Act empowering the Selectmen of ſuch Towns in this Commonwealth, as are already, or may hereafter be provided with a Fire Engine or Engines, to nominate and appoint Engine Men.

WHEREAS it is of great importance to the preſervation of life and property, that proviſion be made to extinguiſh fires; and the method of ſelecting ſuitable perſons for the purpoſe of keeping in repair and working fire engines in ſuch towns as are provided therewith, hath been productive of good conſequences:

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the ſelectmen of ſuch towns in this Commonwealth as are provided with a fire engine or engines, or who may in future be provided with a fire engine or engines, be, and they are hereby empowered, if they ſhall judge it expedient, to nominate and appoint a number of ſuitable perſons for engine men, as ſoon as may be, after the paſſing of this act, and ever after in the month of *January*, annually, not exceeding eighteen to any one engine, which engine men who may be nominated and appointed in manner aforeſaid, be, and they are hereby authorized and empowered to meet together ſometime in the month of *May*, annually, for the purpoſe

Selectmen empowered to nominate and appoint engine men.

Engine men empowered to meet annually, to chuſe a director, &c.

of chuſing a maſter or director of the ſaid engine, and eſtabliſhing ſuch rules and regulations for the well ordering of the ſaid company, as the ſelectmen of ſuch town ſhall judge neceſſary and approve; *Provided*, the ſame be not repugnant to the conſtitution and laws of this Commonwealth.

Engine men held and obliged to meet once a month, to examine the ſtate of the engines, &c.

II. *And be it enacted by the authority aforeſaid*, That the reſpective companies of engine men, who may be nominated and appointed in purſuance of this act, ſhall be held and obliged to meet together once at leaſt in each month, and oftener if neceſſary, for the purpoſe of examining the ſtate of the engine to which they belong, and the appendages belonging to the ſame, and ſeeing that the ſaid engine is in good repair, and ready to proceed on any emergency to the relief of any part of the community who may be invaded by the calamity of fire; and the ſaid engine men appointed as aforeſaid, ſhall be held and obliged to go forward, either by night or by day, and uſe their beſt endeavours to extinguiſh any fire that may happen in the ſame town, or the vicinity thereof (under the direction of the firewards in the ſame town) as ſhall come to their knowledge, without delay.

Excuſed from military duty.

III. *Be it enacted by the authority aforeſaid*, That the perſons who may be nominated and appointed engine men, in purſuance of this act, ſhall be, and they are hereby excuſed from all military duty.

Perſons negligent and remiſs in duties, to be diſplaced.

IV. *Be it enacted by the authority aforeſaid*, That if any perſon who being nominated and appointed in manner herein before directed, ſhall be negligent and remiſs in the duties required of him by this act, except ſickneſs or any other diſability ſhall prevent him therefrom, it ſhall be the duty of the ſelectmen in the ſame town, upon ſufficient evidence thereof, to ſtrike his name from ſuch liſt, and proceed to appoint another perſon as an engine man in his room, in the ſame manner as they are herein before empowered to do in the month of *January* annually.

[This act paſſed *March* 15, 1785.]

An Act to prevent Neglect in Sheriffs, Selectmen and Town-Clerks reſpectively, in not calling and preſiding at Town-Meetings, receiving and returning the Votes for Governour, Lieutenant-Governour, Senators and Counſellors, as is pointed out by the Conſtitution of this Commonwealth.

Preamble.

WHEREAS certain duties are by the conſtitution of this Commonwealth required of the ſheriffs, ſelectmen, and town-clerks reſpectively, in calling and preſiding at town-meetings, for the choice of Governour, Lieutenant-Governour, Senators and Counſellors, and in receiving and returning the votes for ſuch officers into the Secretary's office, but no penalty is by law provided, where the ſheriffs,

ſheriffs, ſelectmen and town-clerks ſhall and do neglect or refuſe to perform the duties reſpectively required of them by the conſtitution:

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the ſheriff of any county, who ſhall neglect or refuſe to make ſeaſonable return agreeably to the conſtitution, into the Secretary's office of this Commonwealth, of all ſuch votes for Governour, Lieutenant-Governour, Senators and Counſellors, as he ſhall receive, or ſhall otherwiſe neglect his duty in the premiſes, ſhall for each and every offence forfeit and pay the ſum of *fifty pounds.* Penalty for neglect of duty in ſheriffs.

II. *And be it further enacted,* That each and every ſelectman and town-clerk, who ſhall neglect and refuſe to do and perform the ſeveral duties required of them by the conſtitution, reſpecting the choice of Governour, Lieutenant-Governour, Senators and Counſellors, and returning the votes for the ſame, ſhall for each and every offence, forfeit and pay the ſum of *ten pounds.* Penalty for neglect in ſelectmen and town-clerks.

III. *And be it further enacted by the authority aforeſaid,* That it ſhall be the duty of the Attorney-General to ſue for, and recover all ſuch fines and forfeiture as ſhall be incurred by a breach of this act, for the uſe of this Commonwealth. How recovered, &c.

[This act paſſed *March* 18, 1788.]

An Act for empowering certain Perſons to examine the Sales that have been made by the *Moheakunnuk* Tribe of Indians, and for regulating the future Sales and Leaſes of all Lands from the ſaid Tribe of Indians.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That *John Bacon, Jahleel Woodbridge,* Eſq'rs, and Mr. *John Sargent,* miſſionary to the ſaid Indians, all of *Stockbridge,* be, and hereby are appointed commiſſioners, to examine the ſales of all lands heretofore made by any of the Indians belonging to the *Moheakunnuk* tribe, reſiding in *Stockbridge,* in the county of *Berkſhire,* which have not been legally confirmed; and that the ſaid commiſſioners, or any two of them, be, and they hereby are authorized and empowered, if they ſhall judge ſuch ſales to have been juſtly and fairly made, and that the Indian or Indians making ſuch ſales, have received the juſt value thereof; in ſuch caſe, and not otherwiſe, to confirm the ſame, by entering their approbation on the back of the deed conveying ſuch lands, ſigned with their hands, in the preſence of two witneſſes; which approbation ſo ſignified and atteſted, together with the deed, ſhall be recorded by the regiſter of the ſaid county, and that ſuch deed thus approved, ſhall be of equal force and validity, with a good and lawful deed made by any ſubject of this Commonwealth. Commiſſioners appointed to examine the ſales of all lands belonging to the Moheakunnuk tribe of Indians heretofore made

Sales to be confirmed in caſe.

II.

Future ſales to be approved by the commiſſioners.

II. *Be it further enacted by the authority aforeſaid,* That any future ſales or leaſes which the ſaid Indians may make, of any lands or buildings to them belonging, ſhall, on their being approved by the ſaid commiſſioners in the manner aforeſaid, to all intents and purpoſes, be good and valid in law, and not otherwiſe.

Commiſſioners to lay before the Judge, annually, an account of land, the ſale of which they have approved.

III. *And be it further enacted by the authority aforeſaid,* That the ſaid commiſſioners ſhall lay before the Judge of Probate, for the ſaid county, ſome time in the month of *May*, annually, an account of all the lots and tracts of land, the ſales or leaſes of which they have approved as aforeſaid, ſignifying as near as may be, the quantity and quality of each lot, the price at which the ſame was ſold or leaſed, and the term of the leaſe, together with the name or names of the Indians, ſelling or leaſing, and the name or names of the perſon or perſons, purchaſing or hiring the ſame.

Judge of Probate to make an annual return of the commiſſioners proceedings.

IV. *And be it further enacted,* That the Judge of Probate for the ſaid county, make an annual return of all the commiſſioners proceedings as aforeſaid, that ſhall be lodged at his office, to the Treaſurer of the commiſſioners of the company for propagation of the goſpel in *New-England*, and the parts adjacent, in *America*.

No Indians liable to an action in law, unleſs.

V. *And be it further enacted,* That no Indians belonging to the ſaid tribe, ſhall be liable to an action in law, for any debt which he may contract from and after the firſt day of *May* next enſuing, unleſs the ſaid debt ſhall have been approved by the commiſſioners, as by this act is directed on deeds.

Commiſſioners to be under oath.

VI. *And be it further enacted,* That the commiſſioners hereby appointed, ſhall, on their accepting the truſt by this act repoſed in them, and before they proceed to tranſact the buſineſs aforeſaid, take an oath before the Judge of Probate, for the faithful performance of the truſt and powers hereby repoſed in them.

[This act paſſed *March* 9, 1784.]

An Act confirming a Treaty made with the *Penobſcot* Tribe of Indians.

Preamble.

WHEREAS by a reſolve of the General Court of the ſixth day of July, *in the preſent year,* Benjamin Lincoln, Thomas Rice *and* Rufus Putnam, *Eſquires, were appointed Commiſſioners to treat with the* Penobſcot *tribe of Indians, reſpecting their claims to lands on* Penobſcot-River: *And whereas the ſaid Commiſſioners did on the thirtieth day of* Auguſt, *in the preſent year, make report of an agreement entered into, between them, the Commiſſioners, and the ſaid* Penobſcot *tribe of Indians: which report is in the words following,* viz.

Treaty.

It was agreed by the ſaid Indians on their part, that they would relinquiſh all their claims and intereſt to all the lands on the weſt ſide of *Penobſcot-River,* from the head of the tide up to the River *Paſquataquis,* being about forty-three miles; and all their claims

and

and intereſt on the eaſt ſide of the River, from the head of the tide aforeſaid, up to the River *Mantawomkeektook*, being about eighty-five miles ; reſerving only to themſelves the iſland on which the old town ſtands, about ten miles above the head of the tide, and thoſe iſlands on which they now have actual improvements in the ſaid river, lying from *Sunkhaze-River*, about three miles above the ſaid old town, to *Paſſadunkee-Iſland* incluſively, on which iſland their new town, ſo called, now ſtands. In conſideration hereof, WE, in the name and in behalf of the Commonwealth, engage that the Indians ſhould hold and enjoy in fee, the iſlands reſerved as aforeſaid, and the fee of two iſlands in the bay called and known by the name of *White-Iſland* and *Black-Iſland*, near *Naſkeeg-Point* : And WE further agreed, that the lands on the weſt ſide of the River *Penobſcot*, to the head of all the waters thereof, above the ſaid River *Paſquataquiſs*, and the lands on the eaſt ſide of the River to the head of all the waters thereof, above the ſaid River *Mantawomkeektook*, ſhould lye as hunting ground for the Indians, and ſhould not be laid out or ſettled by the State or engroſſed by individuals thereof : And WE further agreed as aforeſaid, to make the Indians a preſent of three hundred and fifty blankets, two hundred pounds of powder, with a proportion of ſhot and flints : Therefore,

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the agreement expreſſed in the report herein before recited, be, and it is hereby ratified and confirmed on the part of this Commonwealth ; and the Governour with the advice of Council, is hereby authorized and empowered to appoint and commiſſion ſome ſuitable perſon to repair to the ſaid *Penobſcot* tribe of Indians, to carry into execution the ſaid agreement ; to deliver the blankets, powder, ſhot and flints mentioned therein ; and to receive from the ſaid tribe of Indians a deed of relinquiſhment in due form, of the lands mentioned in, and conformable to the ſaid agreement ; and when the ſaid deed of relinquiſhment ſhall be executed as aforeſaid, this act ſhall be conſidered as a compleat and full confirmation of the agreement herein before recited, agreeably to the true intent and meaning thereof. And a copy of this act, under the ſignature of the Governour, with the ſeal of the Commonwealth affixed, ſhall be delivered to the Indians by ſuch perſon as the Governour ſhall commiſſion to execute this buſineſs. Agreement confirmed.

[This act paſſed *October* 11, 1786.]

An Act limiting the Times within which Accounts or Demands againſt this Commonwealth ſhall be exhibited for Liquidation and Allowance.

Preamble.

WHEREAS for the ſpeedy and uniform ſettlement of publick accounts, and for the prevention of fraud, it is expedient that accounts or demands againſt the Commonwealth, not liquidated, ſettled and allowed by government, ſhould be ſeaſonably exhibited for liquidation and allowance:

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all accounts or demands againſt this Commonwealth, which accrued to any individuals or private corporations previous to or during the late war, which have not been exhibited, liquidated and allowed by government, be preſented for liquidation and allowance, on or before the firſt day of *January*, one thouſand ſeven hundred and eighty-ſix; and that all accounts or demands which have ariſen or accrued ſince the cloſe of the late war, or that ſhall hereafter accrue as aforeſaid, which have not or may not be liquidated and allowed by government, be preſented for liquidation and allowance, within two years after the time of paſſing this act, or otherwiſe within two years after the ſame ſhall accrue, become due and payable, and not afterwards.

Time fixed within which accounts may be preſented.

[This act paſſed *February* 9, 1785.]

An Act for granting ſpecial Powers to certain Commiſſioners of the United States, in certain Caſes, and to enable the United States to recover Debts and Effects belonging to the ſaid United States.

Preamble.

WHEREAS the United States in Congreſs aſſembled, in their reſolution of the twentieth of February, *one thouſand ſeven hundred and eighty-two, have provided, that a Commiſſioner ſhall be appointed in the manner therein deſcribed, with full power and authority finally to ſettle the accounts between this State, or any of the ſubjects thereof, and the United States; and have recommended to the Legiſlative of this Commonwealth, to authorize and empower the ſaid Commiſſioner for certain purpoſes therein mentioned:*

I. *Therefore be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Commiſſioner who ſhall be appointed agreeably to the reſolution of Congreſs of the twentieth of *February*, one thouſand ſeven hundred and eighty-two, to ſettle and adjuſt the accounts between the United States and this Commonwealth, or any of the ſubjects thereof, ſhall be, and he hereby is authorized and empowered, in every caſe where doubts ſhall ariſe reſpecting the truth of ſuch

The Commiſſioner to cite before him perſons who can give information, &c.

ſuch accounts, to cite before him, by ſummons under his hand and ſeal, directed to the ſheriff of the county, his deputy, or any conſtable of the town where ſuch witneſs may reſide, ſuch perſon or perſons as may appear likely or qualified to give information concerning the ſaid accounts, and him or them to examine upon oath or affirmation (as the caſe may be) touching the ſame; which oath or affirmation, the ſaid Commiſſioner is hereby empowered to adminiſter; and the ſheriff, or his deputy, or the conſtable, ſhall be, and hereby are reſpectively empowered and required to execute ſuch ſummons within their reſpective diſtricts, and ſhall be entitled to receive the ſame fees as are by law eſtabliſhed for like ſervices; and each witneſs ſhall alſo receive the fees and allowance eſtabliſhed by law in like caſes, to be paid by the party for the validation of whoſe accounts the ſaid witneſs is neceſſarily called.

To be examined upon oath.

Sheriffs, &c. to execute the ſummons.

Fees by whom paid.

And whereas by a reſolution of the United States in Congreſs aſſembled, paſſed the twenty-ſeventh of *February*, one thouſand ſeven hundred and eighty-two, five commiſſioners are or may be appointed under the direction of the ſuperintendant of finance, for the ſettlement of accounts in the ſeveral departments of the Quarter-Maſter, Commiſſary, Hoſpital, Clothier and Marine; And whereas it is neceſſary that the Commiſſioners who are or may be ſo appointed, be empowered to call witneſſes and examine them, touching ſuch accounts as are to them reſpectively aſſigned for ſettlement:

II. *Therefore be it enacted by the authority aforeſaid*, That all the powers and authorities which by this act are given to the Commiſſioner for ſettling and adjuſting accounts between the United States and this Commonwealth, be, and they hereby are given to each of the ſaid five Commiſſioners reſpectively, to be by them uſed and exerciſed in the ſame manner as they are or may be uſed or exerciſed by the aforeſaid Commiſſioner in like caſes.

Same powers given to each of the five Commiſſioners.

III. *And be it further enacted by the authority aforeſaid*, That the United States, by the name of the United States of *America*, ſhall be, and hereby are fully authorized and empowered to commence and proſecute to final judgment and execution, in any Court within this Commonwealth proper to try the ſame, any action proper for the recovery of any debts, dues or effects, belonging to the ſaid United States, of or from any individual or individuals of the ſaid Commonwealth; and may appear by their Commiſſioner, to whoſe department the cauſe of action may pertain, or by any attorney duly appointed by ſuch Commiſſioner; and ſhall have all the privileges touching ſuch actions as any natural perſon or ſubject of this Commonwealth might have. *Provided always*, That depoſitions ſhall and may be uſed in all caſes referred to in this act, in the manner they are or may be uſed on like occaſions in civil cauſes.

United States to commence any action for the recovery of debts

Proviſo

[This act paſſed *March* 12, 1783.]

An

An Act empowering the Delegates of this Commonwealth, in the United States in Congreſs aſſembled, to relinquiſh to the United States certain Lands, the Property of this Commonwealth.

Preamble. *WHEREAS ſeveral of the States in the union, have at preſent no intereſt in the great and extenſive tract of uncultivated country, lying in the weſterly part of the United States, and it may be reaſonable that the States abovementioned ſhould be intereſted in the aforeſaid country:*

Delegates authorized to cede certain lands. I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That the Delegates of this Commonwealth, in the United States in Congreſs aſſembled, or any three of the ſaid Delegates, be, and they hereby are authorized and empowered, for and in behalf of this Commonwealth, to cede or relinquiſh, by authentic conveyance or conveyances, to the United States, to be diſpoſed of for the common benefit of the ſame, agreeably to a reſolve of Congreſs, of *October* the tenth, one thouſand ſeven hundred and eighty, ſuch part of that tract of land belonging to this Commonwealth, which lies between the rivers *Hudſon* and *Miſſiſippi*, as they may think proper; and to make the ſaid ceſſion in ſuch manner and on ſuch conditions as ſhall appear to them to be moſt ſuitable.

[This act paſſed *November* 13, 1784.]

An Act in Addition to an Act, entitled, "An Act empowering the Delegates of this Commonwealth, in the United States in Congreſs aſſembled, to relinquiſh to the United States certain Lands, the Property of this Commonwealth."

Preamble. *WHEREAS by the act aforeſaid, three Delegates repreſenting this State in Congreſs, are neceſſary to make the ceſſion aforeſaid, and it may be neceſſary that the ſaid buſineſs ſhould be performed by a leſs number of the ſaid Delegates:*

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That any two Delegates repreſenting this Commonwealth in Congreſs, be, and hereby are authorized and empowered, to do and perform all matters and things which by the act aforeſaid might be done and performed by any three Delegates as aforeſaid, any thing in the aforeſaid act notwithſtanding.

[This act paſſed *March* 17, 1785.]

An Act to authorize the United States in Congreſs aſſembled, to appoint Commiſſioners to compleat the running the Line of Juriſdiction between the Commonwealth of *Maſſachuſetts* and the State of *New-York*, on the Eaſterly Part of the State of *New-York*.

Preamble.

WHEREAS an agreement was made and entered into, on the eighteenth day of May, *in the year of our Lord, one thouſand ſeven hundred and ſeventy-three, between Commiſſioners appointed by an act of the Legiſlature of the late province of* Maſſachuſetts-Bay, *and Commiſſioners appointed by an act of the Legiſlature of the late colony of* New-York, *for the ſettlement of a partition line of juriſdiction between the ſaid late province of* Maſſachuſetts-Bay, *and the late colony of* New-York, *on the eaſterly part of the ſaid colony of* New-York: *And whereas, ſince the agreement made as aforeſaid, Commiſſioners and ſurveyors have been appointed on the part of the Commonwealth of* Maſſachuſetts *and the State of* New-York, *reſpectively, to run and mark the ſaid line, purſuant to the ſaid agreement; which Commiſſioners, although attempts have been made for that purpoſe, have not been able to compleat the running the ſaid line: And whereas the State of* New-York, *by an act of their Legiſlature, paſſed on the ſeventh day of* March, *one thouſand ſeven hundred and eighty-five, have on their part authorized the United States in Congreſs aſſembled, to appoint three ſkilful, judicious and diſintereſted perſons, as Commiſſioners, to run out, ſurvey, mark and aſcertain the ſaid line of juriſdiction, according to the true intent and meaning of the agreement above referred to:*

United States in Congreſs aſſembled authorized to appoint Commiſſioners.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That it ſhall and may be lawful to and for the United States of *America*, in Congreſs aſſembled, and they are hereby fully authorized to appoint three ſkilful, judicious and diſintereſted perſons, as Commiſſioners, to run out, ſurvey, mark and aſcertain the ſaid line of juriſdiction, between this Commonwealth, and the State of *New-York*, according to the true intent and meaning of the agreement abovementioned.

Line run by the Commiſſioners, to remain a juriſdiction or boundary line.

II. *And be it further enacted by the authority aforeſaid,* That the line ſo to be run, marked and aſcertained by the ſaid Commiſſioners, or any two of them, according to the true intent and meaning of the ſaid agreement, ſhall be, and forever hereafter remain a juriſdiction or boundary line, as far as the ſame ſhall extend, between this Commonwealth, and the eaſterly part of the State of *New-York*.

Proviſo, that the Commiſſioners be ſworn, &c.

Provided always, That the Commiſſioners ſo to be appointed, ſhall before they proceed upon the execution of their truſt, be ſworn faithfully and impartially to perform the ſame, according to the beſt of their ſkill and judgment; and ſhall, within two years from

the ſeventh day of *March*, one thouſand ſeven hundred and eighty-five, compleat the ſaid ſurvey, and make a true and exact return thereof into the Secretary's office of the United States in Congreſs aſſembled, to be there filed as a perpetual evidence of the ſaid juriſdiction line.

Governour, with conſent of Council, authorized to appoint perſons to furniſh the Commiſſioners with the neceſſary documents and papers.

III. *And be it further enacted by the authority aforeſaid*, That the Governour, by and with the conſent of the Council of this Commonwealth, is hereby authorized to appoint one or more perſon or perſons to furniſh the ſaid Commiſſioners, which ſhall be appointed by Congreſs to run and aſcertain the line aforeſaid, with the neceſſary documents and papers relative to the ſaid line, and to make his warrant on the Treaſurer of this Commonwealth, in favour of the perſon or perſons ſo to be appointed, for the ſum of *three hundred pounds*, to be applied, if neceſſary, for the payment of one half of the expences attending the ſurvey, and for which they ſhall be accountable to this Commonwealth.

[This act paſſed *June* 29, 1785.]

An Act for granting further Time to the Commiſſioners, appointed by Congreſs, for compleating the running of the Line of Juriſdiction, between the Commonwealth of *Maſſachuſetts*, and the State of *New-York*, on the Eaſterly Part of the State of *New-York*.

Preamble.

WHEREAS by virtue of an act, paſſed the twenty-ninth day of June, A. D. *one thouſand ſeven hundred and eighty-five, entitled, "An Act, to authorize the United States in Congreſs aſſembled, to appoint Commiſſioners to compleat the running the line of juriſdiction between the Commonwealth of* Maſſachuſetts *and the State of* New-York, *on the eaſterly part of the State of* New-York," *the ſaid United States in Congreſs aſſembled, did appoint Commiſſioners, "to run out, ſurvey, mark and aſcertain the ſaid line of juriſdiction," who have not yet compleated the buſineſs of their appointment:*

And whereas the time limited by the act aforeſaid, for the Commiſſioners to compleat the ſaid ſurvey, and to make a return thereof into the Secretary's office, of the United States, will expire on the ſeventh day of March, 1787, *and the buſineſs of their commiſſion cannot be compleated within that time:*

Further term allowed the Commiſſioners, for running the line of juriſdiction.

I. *Therefore be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the further term of one year from the ſeventh day of *March A. D.* one thouſand ſeven hundred and eighty-ſeven, be, and hereby is allowed to the ſaid Commiſſioners, to compleat the running the ſaid line of juriſdiction between the Commonwealth of *Maſſachuſetts*,

chuſetts, and the State of *New-York*, on the eaſterly part of the State of *New-York*: And the ſaid Commiſſioners ſhall, at or before the expiration of the ſaid term, compleat the buſineſs of their commiſſion, and make a true and exact return thereof into the Secretary's office of the United States, to be there filed, as a perpetual evidence of the ſaid juriſdiction line.

[This act paſſed *March* 1, 1787.]

An Act empowering the Agents appointed by this Government, to defend the Territory on the Weſt Side of *Hudſon*'s River, againſt the Claims of the State of *New-York*, to ſettle the Controverſy relative thereto, otherwiſe than by a Federal Court, if they ſhall judge it expedient.

WHEREAS it appears that the Legiſlative of New-York, *have by their act empowered the Commiſſioners by them appointed for vindicating the right and juriſdiction of the State of* New-York, *againſt the claim of this Commonwealth, to ſettle the controverſy, otherwiſe than by a Federal Court*: Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the Agents or Commiſſioners appointed by this Government to defend the territory of this Commonwealth on the weſt ſide of *Hudſon*'s river againſt the claim of the State of *New-York*, or the major part of the ſaid Agents or Commiſſioners, be, and they are hereby fully authorized and empowered to agree with the Agents or Commiſſioners of the State of *New-York*, and ſettle the controverſy reſpecting the territory aforeſaid, by a Federal Court, as appointed by virtue of the confederation, or otherwiſe, in ſuch way and manner as they ſhall judge will comport with juſtice, and the intereſt of this Commonwealth. Agents empowered.

[This act paſſed *July* 5, 1786.]

Agreement entered into by the Commiſſioners, appointed to ſettle the Controverſy between the Commonwealth of *Maſſachuſetts* and the State of *New-York*, reſpecting Lands lying weſtward of *Hudſon's* River.

To all to whom theſe Preſents ſhall come,

The underwritten John Lowell, James Sullivan, Theophilus Parſons *and* Rufus King, *Agents or Commiſſioners appointed by the Commonwealth of* Maſſachuſetts, *of the one part, and the underwritten* James Duane, Robert R. Livingſton, Robert Yates, John Haring, Melancton Smith, *and* Egbert Benſon, *ſix of the Agents or Commiſſioners appointed by the State of* New-York, *of the other part* ;

SEND GREETING:

Preamble. WHEREAS the Commonwealth of *Maſſachuſetts*, did heretofore preſent a petition to the United States in Congreſs aſſembled, thereby among other things, ſtating, that all that territory which in the ſaid petition is deſcribed as all that part of *New-England* in *America*, which lieth and extendeth between a great river, called *Merrimack*, and a certain other river there, called *Charles-River*, being the bottom of a bay there called *Maſſachuſetts-Bay* ; and alſo, all thoſe lands lying within three Engliſh miles to the ſouthward of the ſouthernmoſt part of the ſaid bay, and extending thence northward in latitude to northward of every part of the ſaid river *Merrimack*, and in breadth of latitude aforeſaid, extending throughout all the main land, in longitude weſterwardly to the ſouthern ocean, was the juſt and proper right of the ſaid Commonwealth ; and farther ſtating, That the State of *New-York* had ſet up a claim to ſome part of the land before mentioned ; the ſaid Commonwealth did, therefore, by the ſaid petition, ſolemnly requeſt of the United States in Congreſs, that Commiſſioners might be appointed for enquiring into and determining upon the claim aforeſaid, of the Legiſlature of the ſaid Commonwealth, and that ſuch other proceedings reſpecting the premiſes, might be had, as are by the federal government of the ſaid United States, in ſuch caſe made and provided, as by the ſaid petition filed among the archives of the United States, reference being thereunto had, may more fully appear : And whereas, the State of *New-York* doth, in oppoſition to the ſaid claim of the Commonwealth of *Maſſachuſetts*, claim as the juſt and proper right of the ſaid State, as well in reſpect of property, as juriſdiction, all thoſe lands and territories bounded on the north, by the parallel of latitude paſſing through the ſaid point, place or boundary aforeſaid, of three miles to the northward of every part of the ſaid river *Merrimack*, and bounded on the ſouth, by the parallel of latitude paſſing through the ſaid point or place, ſituate three miles ſouth of the ſouthermoſt part of ſaid bay, called *Maſſachuſetts-Bay*, bounded on the weſt by the limits between the United States and the King of *Great-Britain*

and

and the line of ceſſion from the State of *New-York*, to the United States, and bounded on the eaſt by the line agreed on, and eſtabliſhed between the late colony of the *Maſſachuſetts-Bay* and the late colony of *New-York*, in the year one thouſand ſeven hundred and ſeventy-three, and from the northern termination of the ſaid line then bounded on the eaſt by the weſt bank of *Connecticut-River*: And whereas, the State of *New-York* having been duly notified, did appear by their lawful agents to vindicate ſuch their ſaid right againſt the ſaid claim of the ſaid Commonwealth; and proceedings were thereupon had in Congreſs, purſuant to the articles of confederation, in order to the appointment of Commiſſioners or Judges to conſtitute a Court for hearing and determining the ſaid matters in queſtion: And whereas, the ſaid *John Lowell*, *James Sullivan*, *Theophilus Parſons* and *Rufus King*, were afterwards, by a certain commiſſion under the ſeal of the ſaid Commonwealth, and bearing date the twenty-ſixth day of *April*, in the ninth year of the independence of the United States, and made in purſuance of an act of the Legiſlature of the ſaid Commonwealth, paſſed the fourteenth day of *March*, in the eighth year of the independence of the United States, and of a reſolution of the ſaid Legiſlature, paſſed the eighteenth day of the ſaid month of *March*—commiſſioned to be agents to manage, conduct and proſecute the claims of the ſaid Commonwealth, to the lands deſcribed in the ſaid petition: And whereas, afterwards and pending ſuch proceedings in Congreſs, the Legiſlature of the Commonwealth of *Maſſachuſetts*, did, by an act entitled an act empowering the Agents appointed by their government to defend the territory on the weſt ſide of *Hudſon's-River*, againſt the claims of the State of *New-York*, to ſettle the controverſy relative thereto, otherwiſe than by a federal Court, if they ſhall judge it expedient, enact, That the major part of the ſaid Agents or Commiſſioners ſhould be fully authorized and empowered to agree with the Agents or Commiſſioners of the State of *New-York*, and ſettle the controverſy reſpecting the territory aforeſaid, by a federal Court as appointed by virtue of the confederation, or otherwiſe in ſuch way and manner as they ſhould judge would comport with juſtice and the intereſt of the ſaid Commonwealth; and the Legiſlature of the State of *New-York*, did, by an act entitled, "An Act ſupplementary to the act entitled, an act to appoint Agents or Commiſſioners for vindicating the right and juriſdiction of this State againſt the claims of the Commonwealth of *Maſſachuſetts*, purſuant to the articles of confederation and perpetual union of the United States," among other things enact, That it ſhould be lawful for the ſaid *James Duane*, *Robert R. Livingſton*, *Egbert Benſon*, *John Haring*, *Melancton Smith*, and *Robert Yates*, and alſo, *John Lanſing*, jun. or any five or more of them, to ſettle the ſaid controverſy between the ſaid State of *New-York*, and the ſaid Commonwealth of *Maſſachuſetts*, otherwiſe than by the ſaid federal Court, in ſuch manner as they ſhould judge moſt conducive to the intereſt of the ſaid State, as by the ſaid commiſſion and the ſaid ſeveral acts, relation being thereunto had, may appear. Preamble.

Mutual ceſſions agreed to.

Now therefore know ye, That the underwritten Commiſſioners on the part of the Commonwealth of *Maſſachuſetts* and the State of *New-York* reſpectively, having by mutual conſent aſſembled at the city of *Hartford* in the State of *Connecticut*, on the thirtieth day of *November* laſt, in order to the due execution of their reſpective truſts, and having duly exchanged and conſidered their reſpective powers, and declared the ſame legal and ſufficient after ſeveral conferences, and to the end that all interfering claims and controverſies between the ſaid Commonwealth of *Maſſachuſetts* and the ſaid State of *New-York*, as well in reſpect of juriſdiction, as property, may be finally ſettled and extinguiſhed, and peace and harmony forever eſtabliſhed between them on the moſt ſolid foundation——HAVE AGREED, and by theſe Preſents, do mutually for and in behalf of the ſaid Commonwealth of *Maſſachuſetts* and the ſaid State of *New-York*, by whom reſpectively, they the ſaid Commiſſioners have been ſo appointed and authorized as aforeſaid, agree to the mutual ceſſions, grants, releaſes and other proviſions following, *that is to ſay:*

Government of the lands and territories, ceded to the State of New-York.

Firſt. The Commonwealth of *Maſſachuſetts* doth hereby cede, grant, releaſe and confirm to the State of *New-York* forever, all the claim, right and title which the Commonwealth of *Maſſachuſetts* hath to the government, ſovereignty, and juriſdiction of the lands and territories ſo claimed by the State of *New-York*, as herein before ſtated and particularly ſpecified.

Right of Pre-emption of the ſoil, &c. within the limits deſcribed, ceded to the Commonwealth of Maſſachuſetts.

Secondly. The State of *New-York* doth hereby cede, grant, releaſe and confirm to the Commonwealth of *Maſſachuſetts*, and to the uſe of the Commonwealth, their grantees, and the heirs and aſſigns of ſuch grantees forever, the right of pre-emption of the ſoil from the native Indians, and all other the eſtate, right, title and property, (the right and title of government, ſovereignty and juriſdiction excepted) which the State of *New-York*, hath of, in, or to two hundred and thirty thouſand and four hundred acres, to be located by the Commonwealth of *Maſſachuſetts*, and to be ſituate to the northward of, and adjoining to the lands granted reſpectively to *Daniel Cox* and *Robert Lettice Hooper*, and their reſpective aſſociates, and between the rivers *Owega* and *Chenengo*. And alſo, of, in or to all the lands and territories within the following limits and bounds, that is to ſay: Beginning in the north boundary line of the State of *Pennſylvania*, in the parrallel of forty-two degrees of north latitude, at a point diſtant eighty-two miles weſt from the north-eaſt corner of the State of *Pennſylvania*, on *Delaware-River*, as the ſaid boundary-line hath been run and marked by the Commiſſioners appointed by the States of *Pennſylvania* and *New-York* reſpectively, and from the ſaid point or place of beginning, running on a due meridian north to the boundary line between the United States of *America*, and the King of *Great-Britain*; thence weſterly and ſoutherly along the ſaid boundary line, to a meridian which will paſs one mile due eaſt from the northern termination of the Streight, or waters between *Lake-Ontario*

tario and *Lake-Erie*; thence ſouth along the ſaid meridian, to the ſouth ſhore of *Lake-Ontario*; thence on the eaſtern ſide of the ſaid Streight, by a line always one mile diſtant from the parrallel to the ſaid Streight, to *Lake-Erie*; thence due weſt to the boundary line between the United States and the King of *Great-Britain*; thence along the ſaid boundary line, until it meets with the line of ceſſion from the State of *New-York* to the United States; thence along the ſaid line of ceſſion, to the northweſt corner of the State of *Pennſylvania*; and thence eaſt along the northern boundary line of the State of *Pennſylvania* to the ſaid place of beginning: And which ſaid lands and territories ſo ceded, granted, releaſed and confirmed, are parcel of the lands and territories deſcribed in the ſaid petition.

Right of pre-emption of the reſidue, ceded to the State of *New-York*.

Thirdly. The Commonwealth of *Maſſachuſetts* doth hereby cede, grant, releaſe and confirm to the State of *New-York*, and to the uſe of the State of *New-York*, their grantees and the heirs and aſſigns of ſuch grantees forever, the right of pre-emption of the ſoil from the native Indians, and all other the eſtate, right, title and property, which the Commonwealth of *Maſſachuſetts* hath of, in or to the reſidue of the lands and territories ſo claimed by the State of *New-York*, as herein before ſtated, and particularly ſpecified.

Lands ceded, &c. to be exempt from taxes.

Fourthly. That the lands ſo ceded, granted, releaſed and confirmed to the Commonwealth of *Maſſachuſetts*, or ſuch part thereof as ſhall from time to time be and remain the property of the Commonwealth of *Maſſachuſetts*, ſhall during the time that the ſame ſhall ſo be and remain ſuch property, be free and exempt from all taxes whatſoever, and that no general or State tax ſhall be charged on, or collected from the lands hereafter to be granted by the Commonwealth of *Maſſachuſetts*, or on the occupants or proprietors of ſuch lands, until fifteen years after ſuch confirmation, as is herein after mentioned, of ſuch grants, ſhall have expired; but that the lands ſo to be granted, and the occupants thereof, ſhall during the ſaid period, be ſubject to town or county charges or taxes only; *Provided*, That this exemption from general or State taxes, ſhall not be conſtrued to extend to ſuch duties, exciſes or impoſts, to which the other inhabitants of the State of *New-York*, ſhall be ſubject and liable.

Proviſo.

No rents or ſervices ſhall be reſerved.

Fifthly. That no rents or ſervices ſhall be reſerved in any grants to be made of the ſaid lands by the Commonwealth of *Maſſachuſetts*.

Inhabitants holding lands by grants from *Maſſachuſetts*, entitled to equal rights with the other citizens of *New-York*.

Sixthly. That the inhabitants on the ſaid lands and territories, being citizens of any of the United States, holding by grants from the Commonwealth of *Maſſachuſetts*, ſhall be entitled to equal rights with the other citizens of the State of *New-York*; and further, that the citizens of the Commonwealth of *Maſſachuſetts*, ſhall from time to time, and at all times hereafter, have and enjoy the ſame and equal rights, reſpecting the navigation and fiſhery, on and in *Lake Ontario* and *Lake Erie*, and the waters communicating from the one to the other of the ſaid lakes, and reſpecting the roads and portages between the ſaid lakes, as ſhall from time to time be

and

had and enjoyed by the citizens of the State of *New-York*; and the citizens of the Commonwealth of *Maſſachuſetts* ſhall not be ſubject to any other regulations, or greater tolls or duties to be made or impoſed from time to time by the State of *New-York*, reſpecting the premiſes, than the citizens of the State of *New-York* ſhall be ſubject to.

No adverſe poſſeſſion, ſhall be adjudged a diſſeizen.

Seventhly. That no adverſe poſſeſſion of the ſaid lands for any length of time, ſhall be adjudged a diſſeizen of the Commonwealth of *Maſſachuſetts*.

State of *New-York*, ſhall not diveſt themſelves of the government and juriſdiction of the ſaid lands, &c.

Eighthly. That the State of *New-York*, ſo long as any part of the ſaid lands ſhall be, and remain the property of the Commonwealth of *Maſſachuſetts*, ſhall not cede, relinquiſh, or in any manner diveſt themſelves of the government and juriſdiction of the ſaid lands or any part thereof, without the conſent of the Commonwealth of *Maſſachuſetts*.

Commonwealth of *Maſſachuſetts* may hold treaties, &c. with the native Indians.

Ninthly. That the Commonwealth of *Maſſachuſetts*, may from time to time, by perſons to be by them authorized for the purpoſe, hold treaties and conferences with the native Indians, relative to the property or right of ſoil of the ſaid lands and territories hereby ceded, granted, releaſed and confirmed to the Commonwealth of *Maſſachuſetts*, and with ſuch armed force as they ſhall deem neceſſary for the more effectual holding ſuch treaty or conference; and the Commonwealth of *Maſſachuſetts*, within ſix months after ſuch treaties ſhall reſpectively be made, ſhall cauſe copies thereof to be depoſited in the office of the Secretary of the State of *New-York*.

Commonwealth of *Maſſachuſetts* may grant the right of pre-emption, to any perſon or perſons.

Proviſo.

Tenthly. The Commonwealth of *Maſſachuſetts*, may grant the right of pre-emption of the whole or of any part of the ſaid lands and territories to any perſon or perſons, who by virtue of ſuch grant, ſhall have good right to extinguiſh by purchaſe, the claims of the native Indians: *Provided*, however, that no purchaſe from the native Indians by any ſuch grantee or grantees, ſhall be valid, unleſs the ſame ſhall be made in the preſence of, and approved by a ſuperintendant to be appointed for ſuch purpoſe by the Commonwealth of *Maſſachuſetts*, and having no intereſt in ſuch purchaſe; and unleſs ſuch purchaſe ſhall be confirmed by the Commonwealth of *Maſſachuſetts*.

Grantees under *Maſſachuſetts*, to cauſe copies of ſuch grants to be depoſited in the Secretary's office of the State of *New-York*.

Eleventhly. That the grantees of the ſaid lands and territories under the Commonwealth of *Maſſachuſetts*, ſhall within ſix months after the confirmation of their reſpective grants, cauſe ſuch grants or the confirmation thereof, or copies of ſuch grants or confirmations certified or examplified under the ſeal of the Commonwealth of *Maſſachuſetts*, to be depoſited in the ſaid office of the Secretary of the State of *New-York*, to the end that the ſame may be recorded there, and after the ſame ſhall have been ſo recorded, the grantees ſhall be entitled to receive again from the ſaid Secretary their reſpective grants or confirmations, or the copies thereof, which ſoever may have been ſo depoſited, without any charges or fees of office whatſoever, and every grant or confirmation which ſhall not, or of which ſhall not be ſo depoſited, ſhall be adjudged void.

IN

IN TESTIMONY WHEREOF, the ſaid *John Lowell*, *James Sullivan*, *Theophilus Parſons* and *Rufus King*, for and in the name and behalf of the ſaid Commonwealth of *Maſſachuſetts*; and the ſaid *James Duane*, *Robert R. Livingſton*, *Robert Yates*, *John Haring*, *Melancton Smith* and *Egbert Benſon*, for and in the name and on behalf of the ſaid State of *New-York*, have to theſe preſents, and a duplicate thereof, both indented, interchangeably ſet their hands, and affixed their ſeals; done at the city of *Hartford* aforeſaid, the ſixteenth day of *December*, in the year of our Lord one thouſand ſeven hundred and eighty-ſix, and the eleventh year of the Independence of the United States of *America*. Teſtimony.

JOHN LOWELL,	(L. S.)
JAMES SULLIVAN,	(L. S.)
THEOPHILUS PARSONS,	(L. S.)
RUFUS KING,	(L. S.)
JAMES DUANE,	(L. S.)
ROBERT R. LIVINGSTON,	(L. S.)
ROBERT YATES,	(L. S.)
JOHN HARING,	(L. S.)
MELANCTON SMITH,	(L. S.)
EGBERT BENSON,	(L. S.)

Witneſs preſent at the ſealing and delivery; *George Wyllys*, *Thomas Seymour*, *Jeſſe Root*, *Jeremiah Wadſworth*, *D. Humphreys*, *William Imlay*, *Joſeph Webb*, *Simeon de Witt*, *Lewis du Boys*, *Nathaniel Bethune*. Witneſſes.

Reſolve for diſpoſing of the Right of Pre-emption which the Commonwealth of *Maſſachuſetts* has in, and to the Weſtern Territory, ſo called, (lately ceded by the State of *New-York*) to the Hon. *Nathaniel Gorham*, and *Oliver Phelps*, Eſq'rs.

ON the propoſal made to the General Court, by the Hon. Nathaniel Gorham, *and* Oliver Phelps, *Eſq'rs, to purchaſe for the conſideration of* three hundred thouſand pounds, *in conſolidated ſecurities of this Commonwealth*; *or* two thouſand pounds, *ſpecie, together with* two hundred *and* ninety thouſand pounds, *in like ſecurities, the right of pre-emption which this Commonwealth has in, and to the weſtern territory, ſo called, lately ceded by the State of* New-York, *to this Commonwealth, as appears by deed executed by their reſpective Commiſſioners, at* Hartford, *the ſixteenth day of* December A. D. 1786: Preamble.

Reſolved, That the ſaid propoſal for purchaſing the land aforeſaid, for the conſideration of *three hundred thouſand pounds*, in conſolidated ſecurities of this Commonwealth, be, and hereby is accepted, and this Commonwealth doth hereby agree, to grant, ſell, and convey to the ſaid *Nathaniel Gorham* and *Oliver Phelps*, Eſquires, all the right, title and demand, which the ſaid Common- Weſtern territory granted to the Hon. *Nathaniel Gorham* & *Oliver Phelps*, Eſq'rs.

wealth has in, and to the weſtern territory, by the deed of ceſſion aforeſaid, to have and hold the ſame to the ſaid *Nathaniel Gorham* and *Oliver Phelps*, Eſquires, their heirs and aſſigns, forever, upon the conditions hereafter expreſſed; and the ſaid *Nathaniel Gorham* and *Oliver Phelps*, are hereby authorized to extinguiſh, by purchaſe, the claims of the native Indians, holding the fee or right of ſoil, in the territory aforeſaid.

Rev. *Samuel Kirkland*, to ſuperintend the purchaſe.

II. *And it is hereby Reſolved*, That the Rev. Mr. *Samuel Kirkland*, be, and hereby is appointed to ſuperintend and approve, at the expence of the ſaid grantees, the purchaſe which the ſaid *Nathaniel Gorham* and *Oliver Phelps*, Eſquires, ſhall make of the claims of ſuch native Indians.

Purchaſes had of the natives, ſhall be confirmed by this Commonwealth.

III. *And it is hereby further Reſolved*, That all ſuch purchaſes as the ſaid *Nathaniel Gorham* and *Oliver Phelps*, ſhall make of the claims of the ſaid Indians, in preſence of the ſaid ſuperintendant, ſhall be confirmed by this Commonwealth, provided the ſaid *Gorham* and *Phelps*, ſhall give ſecurity to the ſatisfaction of the Supreme Executive of this Commonwealth, ſeparate obligations to pay the aforeſaid conſideration monies, to the Treaſurer of this Commonwealth, or his ſucceſſor in office, for the uſe of this Commonwealth, one third thereof in one year, the other third thereof in two years, and one other third thereof in three years from the date of this reſolve, with intereſt in like conſolidated ſecurities, to commence from the date of this reſolve, until paid.

Proviſo.

[This *reſolve* paſſed *April* 1, 1788.]

An Act confirming to *Nathaniel Gorham* and *Oliver Phelps*, Eſquires, a certain Tract of Land, purſuant to a Contract made with them for that Purpoſe.

Preamble.

WHEREAS the Legiſlature of the Commonwealth, by their reſolve of the firſt of April *laſt, did agree to grant, ſell and convey to the ſaid* Nathaniel Gorham *and* Oliver Phelps, *all the right, title, and demand which the ſaid Commonwealth has, in and unto the ſaid lands, ceded by the State of* New-York *to the ſaid Commonwealth, by deed executed by their reſpective Commiſſioners, at* Hartford, *the ſixteenth day of* December, *in the year of our Lord one thouſand ſeven hundred and eighty-ſix, upon the conditions in the ſaid reſolve expreſſed.*

And whereas the ſaid Nathaniel Gorham *and* Oliver Phelps, *have on their part performed the ſaid agreement, and complied with the conditions of the ſaid reſolve. And whereas the ſaid* Nathaniel Gorham *and* Oliver Phelps, *by virtue of authority derived from the aforeſaid reſolve, have by deed from the Sachems, Chiefs and Warriors of the five nations of Indians, bearing date the eighth day of* July *laſt, purchaſed the claims of the native Indians, to the fee or right of ſoil, in part only of the ſaid lands, as contained within the diſcriptions*

of

of the deed, hereafter inſerted, which purchaſe appears to have been made under the ſuperintendency preſcribed, and in the manner intended by the aforeſaid reſolve.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That there be and hereby is granted and confirmed unto *Nathaniel Gorham*, of *Charleſtown*, in the county of *Middleſex*, Eſquire, and *Oliver Phelps*, of *Granville*, in the county of *Hampſhire*, Eſquire, their heirs and aſſigns, all the right, title, claim and demand which this Commonwealth has in and to the following tract of land, *to wit*, beginning on the north boundary line of the ſtate of *Pennſylvania*, in the parallel of forty-two degrees north latitude, at a point diſtant eighty-two miles weſt from the north-eaſt corner of *Pennſylvania*, on *Delaware-River*, as the ſaid boundary line has been run and marked by the Commiſſioners of the States of *New-York* and *Pennſylvania* reſpectively, and from the ſaid point or place of beginning, running weſt upon the ſaid line to a meridian, which will paſs through that corner or point of land made by the confluence of the *Kanahaſgwaicon-Creek*, with the waters of the *Geniſee-River*; thence north along the ſaid meridian to the corner or point laſt mentioned; thence northwardly along the waters of the ſaid *Geniſee-River*, to a point two miles north of *Kanawageras Village*, ſo called; thence running in a direction due weſt twelve miles; thence running in a direction northwardly ſo as to be twelve miles diſtant from the moſt weſtward bounds of the ſaid *Geniſee-River* to the ſhore of the *Ontario-Lake*; thence eaſtwardly along the ſhores of the ſaid lake, to a meridian which will paſs through the firſt point or place of beginning aforementioned; thence ſouth along the ſaid meridian to the firſt point or place of beginning aforeſaid, being ſuch part of the whole tract purchaſed by the grantees as aforeſaid, as they have obtained a releaſe of from the natives, together with all the appurtenances to the afore deſcribed tract belonging: To have and to hold the ſame to them the ſaid *Nathaniel Gorham* and *Oliver Phelps*, their heirs and aſſigns forever, as tenants in common, and not as joint tenants.

Tract of Land granted & confirmed.

Boundaries.

[This act paſſed *November* 21, 1788.]

An Act for repealing any Act, or Parts of Acts heretofore paſſed by the Legiſlature of this Commonwealth, which may militate with, or infringe the Treaty of Peace, entered into by the United States of *America* and *Great-Britain*.

WHEREAS certain laws or ſtatutes, made and paſſed in ſome of the United States, are regarded, and complained of as repugnant to the treaty of peace with Great-Britain, *by reaſon of*

Preamble.

whereof not only the good faith of the United States, pledged by that treaty, has been drawn into queſtion, but their eſſential intereſts, under that treaty, greatly affected. And whereas juſtice to Great-Britain, *as well as regard to the honour and intereſt of the United States, require, that the ſaid treaty be faithfully executed, and that all obſtacles thereto, and particularly ſuch as do or may be conſtrued to proceed from the laws of this Commonwealth, be effectually removed: Therefore,*

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That ſuch of the acts, or parts of acts, of the Legiſlature of this Commonwealth, as may be repugnant to the Treaty of Peace, between the United States and his Britannick Majeſty, or any article thereof, and ſo far as they may be repugnant thereto, ſhall be, and hereby are repealed: And further, that the Courts of law and equity within this Commonwealth, be, and they hereby are directed and required, in all cauſes and queſtions cognizable by them reſpectively, and ariſing from, or touching the ſaid treaty, to decide and adjudge according to the tenor, true intent and meaning of the ſame; any thing in the ſaid acts, or parts of acts, to the contrary thereof, in any wiſe notwithſtanding.

Acts repugnant to the treaty, repealed.

[This act paſſed *April* 30, 1787.]

An Act to incorporate and eſtabliſh a Society for the Cultivation and Promotion of the Arts and Sciences.

Preamble.

AS the arts and ſciences are the foundation and ſupport of agriculture, manufactures and commerce; as they are neceſſary to the wealth, peace, independence and happineſs of a people; as they eſſentially promote the honour and dignity of the government which patroniſes them; and as they are moſt effectually cultivated, and diffuſed through a State, by the forming and incorporating of men of genius and learning into publick ſocieties: For theſe beneficial purpoſes:

I. *Be it therefore enacted by the Council and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Honourable *Samuel Adams*, Eſq. Hon. *John Adams*, Eſq. *John Bacon*, Eſq. Hon. *James Bowdoin*, Eſq. Rev. *Charles Chauncy*, D. D. Rev. *John Clark*, *David Cobb*, Eſq. Rev. *Samuel Cooper*, D. D. Hon. *Thomas Cuſhing*, Eſq. Hon. *Nathan Cuſhing* Eſq. Hon. *William Cuſhing*, Eſq. *Triſtram Dalton*, Eſq. Hon. *Francis Dana*, Eſq. Rev. *Samuel Deane*, Rev. *Perez Fobes*, Rev. *Caleb Gannett*, Hon. *Henry Gardner*, Eſq. Mr. *Benjamin Guild*, Hon. *John Hancock*, Eſq. Hon. *Joſeph Hawley*, Eſq. *Edward Auguſtus Holyoke*, Eſq. Doctor *Ebenezer Hunt*, *Jonathan Jackſon*, Eſq. Dr. *Charles Jarvis*, Rev. *Samuel Langdon*, D. D. Hon. *Levi Lincoln*, Eſq.

Eſq. Rev. *Daniel Little*, Rev. *Elijah Lothrop*, *John Lowell*, Eſq. Rev. *Samuel Mather*, D. D. *Samuel Moody*, Eſq. Hon. *Andrew Oliver*, Eſq. Doctor *Joſeph Orne*, Dr. *Theodore Parſons*, Hon. *George Partridge*, Eſq. Hon. *Robert Treat Paine*, Eſq. Rev. *Phillips Payſon*, *Samuel Phillips*, jun. Eſq. Hon. *John Pickering*, Eſq. Hon. *Oliver Preſcot*, Eſq. Rev. *Zedekiah Sanger*, Hon. *Nathaniel Paſlee Serjeant*, Eſq. *Micajah Sawyer*, Eſq. *Theodore Sedgwick*, Eſq. Hon. *William Sever*, Eſq. *Stephen Sewall*, Eſq. Hon. *David Sewall*, Eſq. *John Sprague*, Eſq. *Ebenezer Storer*, Eſq. *Caleb Strong*, Eſq. Hon. *James Sullivan*, Eſq. Dr. *John Bernard Sweat*, Mr. *Nathaniel Tracy*, *Cotton Tufts*, Eſq. Hon. *James Warren*, Eſq. Rev. *Samuel Weſt*, Rev. *Edward Wiggleſworth*, Rev. *Joſeph Willard*, Rev. *Samuel Williams*, Rev. *Abraham Williams*, Rev. *Nehemiah Williams*, and Mr. *James Winthrop*, be, and they hereby are formed into, conſtituted and made a body politic and corporate, by the name of THE AMERICAN ACADEMY OF ARTS AND SCIENCES; and that they and their ſucceſſors, and ſuch other perſons as ſhall be elected in the manner hereafter mentioned, ſhall be, and continue a body politic and corporate, by the ſame name forever.

American Academy incorporated.

II. *And be it further enacted by the authority aforeſaid*, That the Fellows of the ſaid Academy, may from time to time elect a Preſident, one or more Vice-Preſidents, one or more Secretaries, and ſuch other officers of the ſaid Academy, as they ſhall judge neceſſary or convenient; and they ſhall have full power and authority from time to time, to determine and eſtabliſh the names, number and duties of their ſeveral officers, and the tenure or eſtate they ſhall reſpectively have in their offices; and alſo to authorize and empower their Preſident, or ſome other Fellow of the Academy, at their pleaſure, to adminiſter ſuch oaths to ſuch officers as they ſhall appoint and determine for the well ordering and good government of the ſaid Academy; provided the ſame be not repugnant to the laws of this State.

The Fellows may elect a Preſident, &c.

III. *And be it further enacted by the authority aforeſaid*, That the Fellows of the ſaid Academy ſhall have one common ſeal, which they may make uſe of in whatſoever cauſe or buſineſs ſhall concern the Academy, or be relative to the end and deſign of its inſtitution; and ſhall have power and authority from time to time to break, change, and renew the common ſeal at their pleaſure; and that they may ſue and be ſued in all actions, real, perſonal and mixed, and proſecute and defend the ſame unto final judgment and execution, by the name of, THE PRESIDENT AND FELLOWS OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES.

—— To have one common ſeal.

——May ſue & be ſued.

IV. *And be it further enacted by the authority aforeſaid*, That the Fellows of the ſaid Academy, may from time to time, elect ſuch perſons to be Fellows thereof, as they ſhall judge proper; and that they ſhall have full power and authority from time to time to ſuſpend, expel or diſfranchiſe, any Fellow of the ſaid Academy, who ſhall by his conduct, render himſelf unworthy of a place in that body, in the judgment of the Academy; and alſo to ſettle and eſtabliſh the rules, forms and conditions of election, ſuſpenſion, ex-

Power to elect and expel members.

pulſion and diſfranchiſement. *Provided*, That the number of the ſaid Academy, who are inhabitants of this State, ſhall not at any one time, be more than two hundred, nor leſs than forty.

Empowered to make laws, &c. and to annex fines.

V. *And be it further enacted by the authority aforeſaid*, That the Fellows of the ſaid Academy, ſhall have full power and authority from time to time, to make and enact ſuch reaſonable rules, orders and by-laws, not repugnant to the laws of this State, as ſhall be neceſſary or convenient for the well ordering and good government of the ſaid Academy; and to annex reaſonable pecuniary fines and penalties to the breach of them, not exceeding the ſum of *twenty pounds*, to be ſued for and recovered in any Court of record within this State, in the name and for the uſe of the Preſident and Fellows of the ſaid Academy; and the ſame rules, orders, and by-laws to repeal at their pleaſure: And alſo to ſettle and eſtabliſh the times, places, and manner of convening the Fellows of the ſaid Academy: And alſo to determine the number of Fellows which ſhall be preſent, to conſtitute a meeting of the ſaid Academy. *Provided*, That the Fellows of the ſaid Academy ſhall meet twice in a year at the leaſt; and that the place of their meeting ſhall never be more than thirty miles diſtant from the town of *Boſton*.

Proviſo.

Fellows deemed capable in law of having, holding and taking in fee-ſimple by gift, grant, &c.

VI. *And be it further enacted by the authority aforeſaid*, That the Fellows of the ſaid Academy may, and ſhall forever hereafter be deemed capable in the law of having, holding and taking in fee-ſimple or any leſs eſtate, by gift, grant, deviſe or otherwiſe, any lands, tenements, or other eſtate, real and perſonal: *Provided*, That the annual income of the ſaid real eſtate, ſhall not exceed the ſum of *five hundred pounds*, and the annual income or intereſt of the ſaid perſonal eſtate ſhall not exceed the ſum of *two thouſand pounds*. All the ſums aforementioned in this act to be valued in ſilver, at the rate of *ſix ſhillings* and *eight pence* by the ounce. And the annual intereſt and income of the ſaid real and perſonal eſtate, together with the fines and penalties aforeſaid, ſhall be appropriated for premiums to encourage improvements and diſcoveries in agriculture, arts and manufactures, or for other purpoſes conſiſtent with the end and deſign of the inſtitution of the ſaid Academy, as the Fellows thereof ſhall determine.

Proviſo.

Deſign of the inſtitution.

VII. *And be it further enacted by the authority aforeſaid*, That the end and deſign of the inſtitution of the ſaid Academy, is to promote and encourage the knowledge of the antiquities of *America*, and of the natural hiſtory of the country, and to determine the uſes to which the various natural productions of the country may be applied; to promote and encourage medical diſcoveries, mathematical diſquiſitions, philoſophical enquiries and experiments; aſtronomical, meteorological and geographical obſervations, and improvements in agriculture, arts, manufactures and commerce; and in fine, to cultivate every art and ſcience which may tend to advance the intereſt, honour, dignity and happineſs of a free, independent and virtuous people.

VIII. *And it is further enacted*, That the place where the firſt meeting of the Fellows of the ſaid Academy, ſhall be held, ſhall be

the

the philoſophy-chamber in the Univerſity of *Cambridge*; and that the Honourable *James Bowdoin*, Eſq. be, and he hereby is authorized and empowered to fix the time for holding the ſaid meeting, and to notify the ſame to the Fellows of the Academy. Place where the firſt meeting ſhall be held.

[This act paſſed *May* 4, 1780.]

An Act to incorporate an Academy in the Town of *Andover*, by the Name of *Phillips* Academy.

WHEREAS the education of youth has ever been conſidered by the wiſe and good, as an object of the higheſt conſequence to the ſafety and happineſs of a people; as at that period the mind eaſily receives and retains impreſſions, is formed with peculiar advantage to piety and virtue, and directed to the purſuit of the moſt uſeful knowledge: And whereas the Honourable Samuel Phillips, *of* Andover, *in the county of* Eſſex, *Eſquire, and the Honourable* John Phillips, *of* Exeter, *in the county of* Rockingham, *and State of* New-Hampſhire, *Eſquire, on the firſt day of* April, *in the year of our Lord one thouſand ſeven hundred and ſeventy-eight, by a legal inſtrument of that date, gave, granted and aſſigned to the Honourable* William Phillips, *Eſquire, and others, therein named, and to their heirs, divers lots and parcels of land in ſaid inſtrument deſcribed, as well as certain other eſtate, to the uſe and upon the truſt following. viz. That the rents, profits and intereſt thereof, be forever laid out and expended by the Truſtees in the ſaid inſtrument named, for the ſupport of a publick free ſchool or Academy in the town of* Andover: *And whereas the execution of the generous and important deſign of the grantors aforeſaid, will be attended with very great embarraſſments, unleſs by an act of incorporation, the Truſtees mentioned in the ſaid inſtrument, and their ſucceſſors, ſhall be authorized to commence and proſecute actions at law, and tranſact ſuch other matters in their corporate capacity as the intereſt of the ſaid Academy ſhall require:* Preamble.

I. *Be it therefore enacted by the Council and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That there be and there hereby is eſtabliſhed in the town of *Andover*, and county of *Eſſex*, an Academy, by the name of PHILLIPS ACADEMY for the purpoſe of promoting true piety and virtue, and for the education of youth in the *Engliſh*, *Latin* and *Greek* languages, together with writing, arithmetic, muſick, and the art of ſpeaking; alſo practical geometry, logic, and geography, and ſuch other of the liberal arts and ſciences or languages as opportunity may hereafter permit; and as the Truſtees herein after provided ſhall direct. Academy eſtabliſhed.

II. *Be it further enacted by the authority aforeſaid,* That the Honourable *Samuel Phillips*, of *Andover* aforeſaid, Eſquire, the Honourable *John Phillips*, of *Exeter* aforeſaid, Eſquire, the Honorable *William Phillips*, and *Oliver Wendell*, Eſquires, and *John Lowell*, Eſquire, of *Boſton*, in the county of *Suffolk*, and State of *Maſſachuſetts-Bay*, the Reverend *Joſiah Stearns*, of *Epping*, in the county of Truſtees appointed and incorporated.

of *Rockingham* aforeſaid, the Reverened *William Symms* of ſaid *Andover*, the Reverend *Elias Smith* of *Middleton*, in the ſaid county of *Eſſex*, the Reverend *Jonathan French*, *Samuel Phillips*, jun. Eſq. Mr. *Eliphalet Pearſon*, gentleman, and Mr. *Nehemiah Abbot*, yeoman, all of *Andover* aforeſaid, be, and they hereby are nominated and appointed Truſtees of ſaid Academy; and they are hereby incorporated into a body politic, by the name of the Truſtees of *Phillips* Academy; and that they and their ſucceſſors ſhall be and continue a body politic and corporate, by the ſame name forever.

Lands confirmed to the truſtees.

III. *And be it further enacted by the authority aforeſaid*, That all the lands and monies, which by a legal inſtrument bearing date the firſt day of *April*, in the year of our Lord one thouſand ſeven hundred and ſeventy-eight, were given, granted and aſſigned by the aforementioned *Samuel Phillips* and *John Phillips*, unto the ſaid *William Phillips*, *Oliver Wendell*, *John Lowell*, *Joſiah Stearns*, *William Symms*, *Elias Smith*, *Jonathan French*, *Samuel Phillips*, jun. *Eliphalet Pearſon*, and *Nehemiah Abbot*, and to their heirs, be, and they hereby are confirmed to the ſaid *William Phillips* and others laſt named, and to their ſucceſſors as Truſtees of *Phillips* Academy, forever, for the uſes and purpoſes, and upon the truſt which in ſaid inſtrument are expreſſed: And the Truſtees aforeſaid, their ſucceſſors, and the officers of the ſaid Academy, are hereby required in conducting the concerns thereof, and in all matters relating thereto, to regulate themſelves conformably to the true deſign and intention of the ſaid grantors, as expreſſed in their inſtrument above mentioned.

Truſtees to have one common ſeal;

IV. *And be it further enacted by the authority aforeſaid*, That the ſaid Truſtees and their ſucceſſors, ſhall have one common ſeal, which they may make uſe of in any cauſe or buſineſs that relates to the ſaid office of Truſtees of the ſaid Academy; and they ſhall have power and authority to break, change, and renew the ſaid ſeal from time to time, as they ſhall ſee fit; and that they may ſue and be

May ſue and be ſued.

ſued in all actions real, perſonal and mixed, and proſecute and defend the ſame unto final judgment and execution, by the name of the Truſtees of *Phillips* Academy.

Empowered to elect their officers, and ordain rules, &c.

V. *And be it further enacted by the authority aforeſaid*, That the ſaid *Samuel Phillips* and others, the Truſtees aforeſaid, and their ſucceſſors, the longeſt livers and ſurvivors of them, be the true and ſole Viſitors, Truſtees and Governors of the ſaid *Phillips* Academy, in perpetual ſucceſſion forever, to be continued in the way and manner hereafter ſpecified, with full power and authority to elect ſuch officers of the ſaid Academy as they ſhall judge neceſſary and convenient; and to make and ordain ſuch laws, orders and rules, for the good government of ſaid Academy, as to them the ſaid Truſtees, Governors and Viſitors aforeſaid, and their ſucceſſors ſhall from time to time, according to the various occaſions and circumſtances ſeem moſt fit and requiſite; all which ſhall be obſerved by the officers, ſcholars and ſervants of the ſaid Academy, upon the

Proviſo.

penalties therein contained: *Provided notwithſtanding*, That the ſaid rules, laws and orders be no ways contrary to the laws of this State.

VI.

VI. *And be it further enacted by the authority aforeſaid*, That the number of the ſaid Truſtees aforeſaid, and their ſucceſſors, ſhall not at any one time be more than thirteen, nor leſs than ſeven; ſeven of whom ſhall conſtitute a quorum for tranſacting buſineſs; and a major part of the members preſent at any legal meeting, ſhall decide all queſtions that ſhall come before them, except in the inſtances herein after excepted: That the principal inſtructor for the time being, ſhall ever be one of them; that a major part ſhall be laymen and reſpectable freeholders; alſo that a major part ſhall conſiſt of men who are not inhabitants of the town where the Seminary is ſituate. And to perpetuate the ſucceſſion of ſaid Truſtees:

Number of truſtees not to exceed thirteen.

The principal inſtructor to be one of them.

VII. *Be it further enacted by the authority aforeſaid*, That as often as one or more of the Truſtees of ſaid *Phillips* Academy ſhall die or reſign, or in the judgment of a major part of the other Truſtees, be rendered by age or otherwiſe, incapable of diſcharging the duties of his office, then and ſo often the Truſtees then ſurviving and remaining, or the major part of them, ſhall elect one or more perſons to ſupply the vacancy or vacancies.

Vacancies of truſtees, how ſupplied.

VIII. *And be it further enacted by the authority aforeſaid*, That the Truſtees aforeſaid, and their ſucceſſors, be, and they hereby are rendered capable in law to take and receive by gift, grant, deviſe, bequeſt or otherwiſe, any lands, tenements or other eſtate, real and perſonal; provided that the annual income of the ſaid real eſtate ſhall not exceed the ſum of *five hundred pounds*; and the annual income of the ſaid perſonal eſtate ſhall not exceed the ſum of *two thouſand pounds*; both ſums to be valued in ſilver at the rate of *ſix ſhillings* and *eight pence* by the ounce: To have and to hold the ſame to them the ſaid Truſtees and their ſucceſſors, on ſuch terms and under ſuch proviſions and limitations as may be expreſſed in any deed or inſtrument of conveyance to them made: *Provided always*, That neither the ſaid Truſtees nor their ſucceſſors, ſhall ever hereafter receive any grant or donation, the condition whereof ſhall require them or any others concerned, to act in any reſpect counter to the deſign of the firſt grantors, or of any prior donation: And all deeds and inſtruments which the ſaid Truſtees may lawfully make, ſhall, when made in the name of the ſaid Truſtees, and ſigned and delivered by the Treaſurer, and ſealed with the common ſeal, bind the ſaid Truſtees and their ſucceſſors, and be valid in law.

The truſtees to be deemed capable in the law to take and receive by gift, grant, &c.

Proviſo.

Proviſo.

IX. *And be it further enacted by the authority aforeſaid*, That if it ſhall hereafter be judged upon mature and impartial conſideration of all circumſtances, by two thirds of all the Truſtees, that for good and ſubſtantial reaſons which at this time do not exiſt, the true deſign of this inſtitution will be better promoted by removing the Seminary from the place where it is founded, in that caſe it ſhall be in the power of the ſaid Truſtees to remove it accordingly, and to eſtabliſh it in ſuch place within this State as they ſhall judge to be beſt calculated for carrying into effectual execution the intention of the founders.

Two thirds of ſaid truſtees empowered to remove the ſeminary.

[This act paſſed *October* 4, 1780.]

An Act to create and erect a Corporation by the Name of the Truſtees of Dummer Academy, in the County of *Eſſex*.

Preamble.

WHEREAS his Honour William Dummer, *Eſquire, formerly Lieutenant-Governour of the late province of* Maſſachuſetts-Bay, *did in and by his laſt will and teſtament, deviſe all his eſtate in the town of* Newbury, *in the county of* Eſſex, *to the Rev.* Charles Chauncy, *doctor of divinity, the Rev.* Thomas Foxcraft, *and Mr.* Nathaniel Dummer, *and their heirs, and to the ſurvivor of them, and the heirs of ſuch ſurvivor in truſt, that the rents, iſſues, and profits of his ſaid eſtate, ſhould be applied to the erecting and building of a ſchool-houſe upon his farm in* Newbury *aforeſaid, and towards the ſupport and maintenance of a free grammar ſchool there, for the excellent and beneficent deſign of inſtructing and educating youth. And whereas a publick free ſchool hath ever ſince the firſt day of* March, *in the year of our Lord one thouſand ſeven hundred and ſixty-three, been erected and ſupported agreably to the valuable intentions of the munificent donor, which hath proved of great and publick utility* in qualifying youth for the important offices of Church and State. *And whereas the views of the donor cannot hereafter be fully and completely carried into execution without erecting a body politick and corporate, and inveſting it with certain neceſſary powers which could not be effected by him in his laſt will and teſtament: Now, agreeably to the memorial and petition of the Rev.* Charles Chauncy, *the ſurvivor of the deviſees aforeſaid, in order to carry into compleat execution the benevolent intentions of the charitable teſtator, to ſupport and perpetuate the ſaid ſeminary of learning, the ſame being one of the firſt publick foundations of a free grammar ſchool within the Commonwealth, laid by the hand of private charity, and to protect and encourage the intereſts of literature and the ſciences:*

Truſtees incorporated.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Honourable *Jeremiah Powell,* Eſquire, the Honourable *Benjamin Greenleaf,* Eſquire, the Honourable *Jonathan Greenleaf,* Eſquire, Reverend *Joſeph Willard,* Preſident of *Harvard* College, Reverend *Charles Chauncy,* Doctor of Divinity, Reverend *Moſes Parſons,* Reverend *John Tucker,* Reverend *Thomas Cary, Samuel Moody,* Eſquire, Preceptor of *Dummer* School, *William Powell,* Eſquire, *Micajah Sawyer,* Eſquire, *Dummer Jewett,* Eſquire, *Samuel Oſgood,* Eſquire, *Nathaniel Tracy,* Eſquire, and Mr. *Richard Dummer,* be and they hereby are erected into, and made a body politick and corporate, by the name of THE TRUSTEES OF DUMMER ACADEMY, in the county of *Eſſex*; and that they and their ſucceſſors, and ſuch others as ſhall be duly elected into the ſaid corporation, ſhall be and remain a body politick and corporate by the ſame name forever.

II. *And be it further enacted by the authority aforeſaid,* That the Truſtees of the ſame Academy, ſhall be deemed and taken in law

law to be and ſtand ſeized in fee ſimple and in poſſeſſion to all intents and purpoſes, of all the eſtate which was deviſed by the late Honourable *William Dummer*, Eſq. for the uſe of his publick free ſchool as aforeſaid; and that they ſhall be further capable of having, holding and taking in fee ſimple, or any leſs eſtate, by gift, grant, deviſe, or otherwiſe, any lands, tenements, or other eſtate, real and perſonal: *Provided nevertheleſs*, That the annual income of the ſame, ſhall not exceed *two thouſand pounds*.

Truſtees deemed capable in law of holding and taking in fee-ſimple, any lands or other eſtate, &c.

Proviſo.

III. *And be it further enacted by the authority aforeſaid*, That for the more orderly conducting the buſineſs of the ſaid corporation, the Truſtees of the ſaid Academy ſhall have full power and authority, from time to time, as they ſhall determine, to elect a Preſident, Vice-Preſident, Treaſurer and Secretary, or ſuch other officers as they ſhall judge beſt; and to fix and aſcertain the tenures of their reſpective offices: And that the Truſtees aforeſaid may remove and diſmiſs any Truſtee from the ſame corporation, when in their judgment he ſhall be rendered incapable by age or otherwiſe, of diſcharging the duties of his office; and that the Truſtees aforeſaid may from time to time fill up all vacancies in the ſaid corporation, by electing ſuch perſons for Truſtees as they ſhall judge beſt: *Provided nevertheleſs*, That the number of ſaid Truſtees ſhall never exceed fifteen, nor be leſs than nine.

——empowered to elect a Preſident and other officers.

IV. *And be it further enacted by the authority aforeſaid*, That the Truſtees of the ſaid Academy may have one common ſeal, which they may change, break and renew at their pleaſure; and that all deeds ſigned and delivered by the Treaſurer or Secretary of the Truſtees aforeſaid, by their order, and ſealed with their ſeal, ſhall, when made in their name, be conſidered as their deeds; and as ſuch be deemed duly executed and valid in law: And that the Truſtees of the ſaid Academy may ſue and be ſued in all actions, real, perſonal, or mixed, and proſecute and defend the ſame unto final judgment and execution, by the name of THE TRUSTEES OF DUMMER ACADEMY in the county of *Eſſex*.

——to have one common ſeal; and may ſue and be ſued.

V. *And be it further enacted by the authority aforeſaid*, That the Truſtees of the ſaid Academy ſhall have full power and authority to determine at what times and places their meetings ſhall be holden; and upon the manner of notifying the Truſtees to convene at ſuch meetings; and alſo upon the method of electing or removing Truſtees: And the ſaid Truſtees ſhall have full power and authority to aſcertain and preſcribe from time to time the powers and duties of their ſeveral officers, and to elect ſuch preceptors, maſters and uſhers of the ſaid Academy as they ſhall judge beſt; and to determine the duties and tenures of the ſeveral offices; and to make and ordain, as occaſion ſhall require, reaſonable rules, orders and by-laws, not repugnant to the laws of this Commonwealth; with reaſonable penalties for the good government of the ſaid Academy; and for aſcertaining the qualifications of the ſtudents, requiſite to their admiſſion; and the ſame rules, orders and by-laws at their pleaſure, to repeal.

——empowered to fix times and places for meetings; and to aſcertain the power and duties of their officers, &c.

Provided

Proviſo. *Provided nevertheleſs*, That no corporate buſineſs ſhall be tranſacted by the Truſtees of the ſaid Academy, at any of their meetings, unleſs ſeven of the Truſtees, at the leaſt, are preſent.

Rents, &c. how appropriated. VI. *And be it further enacted by the authority aforeſaid*, That the rents, iſſues and profits of all the eſtate, real and perſonal, of which the Truſtees aforeſaid ſhall be ſeized or poſſeſſed in their ſaid capacity, ſhall be by them appropriated to the eſtabliſhment and endowment of *Dummer* Academy, by maintaining and ſupporting maſters and teachers, for the promotion of piety and virtue; and for the inſtruction of youth in writing, and in the Latin and Greek languages; and in ſuch of the uſeful and liberal arts and ſciences as the Truſtees ſhall hereafter direct.

Proviſo. *Provided nevertheleſs*, That the ſaid Academy ſhall be fixed and remain in the ſame place where the late Honourable *William Dummer*, Eſq. fixed his free ſchool in his laſt will and teſtament. *And provided further*, That *Samuel Moody*, Eſq. the preſent preceptor of the Latin and Greek languages, in the ſaid free ſchool, be continued preceptor of the ſaid Academy; that he receive from the ſaid Truſtees, the rents, iſſues and profits of the eſtate deviſed as aforeſaid by the ſaid *William Dummer*, Eſq. for the endowment of his free ſchool, or an equivalent therefor; and that he enjoy, ſo long as he continues preceptor of the ſaid Academy, all the powers and authority he is inveſted with as preceptor of the ſaid ſchool, under the laſt will and teſtament aforeſaid; and that he be removable in the ſame manner, for the ſame cauſes, and by the ſame authority as are deſcribed and directed in the ſame laſt will and teſtament.

In caſe the rents ſhall ceaſe to be appropriated. VII. *And be it further enacted by the authority aforeſaid*, That whenever the rents, iſſues and profits of the eſtate deviſed as aforeſaid, by the late *William Dummer*, Eſq. ſhall for the ſpace of two years together, ceaſe to be appropriated to the endowment and ſupport of the ſaid Academy, that then the ſame eſtate ſo deviſed, ſhall revert to the right heirs of the ſaid *William Dummer*, Eſq. and their heirs forever. And whenever the rents, iſſues, profits and intereſt of any other eſtate holden by, or in poſſeſſion of the ſaid Truſtees, ſhall ceaſe to be appropriated to the uſes aforeſaid, for the like ſpace of time, then the ſame eſtate ſhall enure to the uſe and benefit of the corporation of *Harvard*-College, and their ſucceſſors forever; unleſs other proviſion ſhall be made by the donor or grantor, in the inſtrument of conveyance.

Hon. Jeremiah Powell, Eſq. to call the firſt meeting. VIII. *And be it further enacted*, That the Honourable *Jeremiah Powell*, Eſq. be, and he hereby is authoriſed and empowered to fix the time and place for holding the firſt meeting of the ſaid Truſtees, and to certify them thereof.

[This act paſſed *October* 3, 1782.]

An

An Act to incorporate an Academy in the Town of *Leiceſter*, by the Name of *Leiceſter* Academy.

WHEREAS the encouragement of literature in the riſing generatien, has ever been conſidered by the wiſe and good, as an object worthy of the moſt ſerious attention, as the ſafety and happineſs of a free people, ultimately depend upon the advantages ariſing from a pious, virtuous, and liberal education: Preamble.

Whereas it appears, that Ebenezer Crafts, *of* Sturbridge, *in the county of* Worceſter, *and* Jacob Davis, *of* Charlton, *in the ſaid county, Eſquires, for the purpoſe of promoting piety and learning, have generouſly given the large and commodious manſion-houſe, lands and appurtenances, in* Leiceſter, *lately occupied by* Aaron Lopez, *deceaſed, for the uſe of an Academy: And it further appears, that the ſum of* one thouſand pounds *is generouſly ſubſcribed for the ſupport of the ſaid Academy; the intereſt thereof, together with what may hereafter be raiſed by donations, with the income or rent of all real eſtate, to be appropriated to the uſe and benefit of the ſaid Academy forever, as Truſtees to be appointed ſhall think moſt expedient. And as it will be neceſſary that the ſaid Truſtees and their ſucceſſors be veſted with authority to commence and proſecute actions at law, and tranſact ſuch other matters in their corporate capacity, as the intereſt of the ſaid Academy ſhall require:*

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That there be, and there hereby is eſtabliſhed in the town of *Leiceſter*, in the county of *Worceſter*, an Academy by the name of LEICESTER ACADEMY, for the purpoſe of promoting true piety and virtue, and for the education of youth in the *Engliſh*, *Latin*, *Greek*, and *French* languages, together with writing, arithmetic, and the art of ſpeaking; alſo practical geometry, logic, philoſophy and geography; and ſuch other of the liberal arts and ſciences or languages as opportunity may hereafter permit, and as the Truſtees herein after provided ſhall direct. Academy eſtabliſhed in Leiceſter,

II. *Be it further enacted by the authority aforeſaid,* That *Ebenezer Crafts*, of *Sturbridge*, and *Jacob Davis*, of *Charlton*, Eſquires, the Honourable *Moſes Gill*, of *Princeton*, *Samuel Baker*, of *Bolton*, and *Levi Lincoln*, of *Worceſter*, *Seth Waſhburn*, of *Leiceſter*, and *Rufus Putnam*, of *Rutland*, Eſq'rs, *Joſeph Allen*, Eſq. and the Reverend *Thaddeus Maccarty*, of *Worceſter*, the Reverends *Joſeph Sumner*, of *Shrewſbury*, *Joſhua Paine*, of *Sturbridge*, *Benjamin Conklin*, of *Leiceſter*, *Archibald Campbell*, of *Charlton*, *Joſeph Pope*, of *Spencer*, all in the county of *Worceſter*, and the Honourable *Timothy Danielſon*, Eſq. of *Brimfield*, in the county of *Hampſhire*, be, and they hereby are nominated and appointed Truſtees of the ſaid Academy; and they are hereby incorporated into a body politic, by the name of the Truſtees of LEICESTER ACADEMY, and they and their ſucceſſors ſhall be, and continue a body politic and corporate, by the ſame name forever. Truſtees appointed and incorporated into a body politick.

Lands, &c. heretofore ſubſcribed, confirmed to the truſtees.

III. *And be it further enacted by the authority aforeſaid*, That all the lands and monies heretofore ſubſcribed, which by a legal inſtrument hereafter to be made ſhall be given, granted and aſſigned by the ſubſcribers unto the Truſtees of *Leiceſter* Academy, ſhall be confirmed to the ſaid Truſtees, and to their ſucceſſors in that truſt forever, for the uſes and purpoſes, and upon the truſt which in the ſaid inſtrument ſhall be expreſſed: And the Truſtees aforeſaid, their ſucceſſors, and the officers of the ſaid Academy, are hereby required in conducting the concerns thereof, and in all matters relating thereto, to regulate themſelves conformably to the true deſign and intention of the ſaid grantors, which in the inſtrument abovementioned ſhall be expreſſed.

To have one common ſeal.

IV. *And be it further enacted by the authority aforeſaid*, That the ſaid Truſtees and their ſucceſſors, ſhall have one common ſeal, which they may make uſe of, in any cauſe or buſineſs that relates to the ſaid office of Truſtees of the ſaid Academy, and they ſhall have power and authority to break, change and renew the ſaid ſeal from time to time as they ſhall ſee fit, and they may ſue and be

To ſue and be ſued.

ſued in all actions, real, perſonal, and mixed, and proſecute and defend the ſame unto final judgment and execution, by the name of THE TRUSTEES OF LEICESTER ACADEMY.

Truſtees to be the true and ſole viſitors, &c. of ſaid Academy.

V. *And be it further enacted by the authority aforeſaid*, That the ſaid *Ebeneze Crafts*, *Jacob Davis*, and others, the Truſtees aforeſaid, and their ſucceſſors, the longeſt livers and ſurvivors, be the true and ſole Viſitors, Truſtees and Governours of the ſaid *Leiceſter* Academy, in perpetual ſucceſſion forever, to be continued in the way and manner hereafter ſpecified, with full power and authority to elect ſuch officers of the ſaid Academy as they ſhall judge

To make laws, &c,

neceſſary and convenient, and to make and ordain ſuch laws, orders and rules, for the good government of the ſaid Academy, as to them the Truſtees, Governours and Viſitors aforeſaid, and their ſucceſſors, ſhall from time to time, according to the various occaſions and circumſtances, ſeem moſt fit and requiſite; all which ſhall be obſerved by the officers, ſcholars, and ſervants of the ſaid Academy, upon the penalties therein contained; *Provided notwithſtanding*, That the ſaid rules, laws and orders, be no ways contrary to the laws of this Commonwealth.

Proviſo.

Number of Truſtees not to be more than 15, nor leſs than 8.

VI. *And be it further enacted by the authority aforeſaid*, That the number of the Truſtees aforeſaid and their ſucceſſors, ſhall not at any one time be more than fifteen nor leſs than eight, a major part of whom ſhall conſtitue a *quorum* for tranſacting buſineſs, and a major part of the members preſent at any legal meeting, ſhall decide all queſtions that ſhall come before them, except in the inſtances herein after excepted, that the principal inſtructor for the

Major part to conſtitute a quorum.

time being ſhall ever be one of them, that the major part ſhall be laymen and reſpectable freeholders; alſo, that a major part ſhall conſiſt of men who are not inhabitants of the town where the ſeminary is ſituate, And to perpetuate the ſucceſſion of the ſaid Truſtees:

VII.

VII. *Be it further enacted by the authority aforeſaid*, That as often as one or more of the Truſtees of the ſaid *Leiceſter* Academy ſhall die or reſign, or in the judgment of the major part of the other Truſtees, be rendered by age or otherwiſe incapable of diſcharging the duties of his office, then and ſo often the Truſtees then ſurviving and remaining, ſhall elect one or more perſons to ſupply the vacancy or vacancies.

When any Truſtee ſhall die, or be rendered incapable, ſurviving Truſtees to elect another.

VIII. *Be it further enacted by the authority aforeſaid*, That the Truſtees aforeſaid, and their ſucceſſors, be, and they hereby are rendered capable in law, to take and receive by gift, grant, deviſe, bequeſt or otherwiſe, any lands, tenements, or other eſtate, real and perſonal. *Provided*, That the annual income of the ſaid real eſtate ſhall not exceed the ſum of *five hundred pounds*, and the annual income of the perſonal eſtate ſhall not exceed the ſum of *two thouſand pounds*, both ſums to be valued in ſilver, at the rate of *ſix ſhillings* and *eight pence* by the ounce, to have and to hold the ſame to them the ſaid Truſtees and their ſucceſſors, on ſuch terms and under ſuch proviſions and limitations, as may be expreſſed in any deed or inſtrument of conveyance to them made. *Provided always*, That neither the ſaid Truſtees, nor their ſucceſſors, ſhall ever receive any grant or donation, the condition whereof ſhall require them or any others concerned, to act in any reſpect counter to the deſign of the firſt grantors, or of any prior donations; and all deeds and inſtruments which the ſaid Truſtees may lawfully make, ſhall when made in the name of the ſaid Truſtees, and ſigned and delivered by the Treaſurer, and ſealed with the common ſeal, bind the ſaid Truſtees and their ſucceſſors, and be valid in law.

Truſtees capable in law to receive by gift, &c. real or perſonal eſtate.

Proviſo.

Proviſo.

IX. *And be it further enacted by the authority aforeſaid*, That if it ſhall hereafter be judged upon mature and impartial conſideration of all circumſtances, by two thirds of all the Truſtees, that for good and ſubſtantial reaſons, which at this time do not exiſt, the true deſign of this inſtitution will be better promoted by removing the ſeminary from the place where it is founded, in that caſe it ſhall be in the power of the ſaid Truſtees to remove it accordingly, and to eſtabliſh it in ſuch place within this State, as they ſhall judge to be beſt calculated for carrying into effectual execution the intention of the founders.

Truſtees empowered to remove the ſeminary.

[This act paſſed *March* 23, 1784.]

An Act for eſtabliſhing a School in the North Pariſh of *Hingham*, by the Name of *Derby-School*, and for appointing and incorporating Truſtees of the ſaid School.

WHEREAS the education of youth has ever been conſidered, by the wiſe and good, as an object of the higheſt conſequence

Preamble.

quence to the ſafety and happineſs of a free people: And whereas Sarah Derby, *of* Hingham, *in the county of* Suffolk, *widow, on the twenty-firſt day of* October, *laſt paſt, by a deed of leaſe and releaſe, of that date, legally executed, gave, granted and conveyed to the Reverend* Ebenezer Gay, *and others therein named, and to their heirs, a certain piece of land, with the buildings thereon, ſituate in the north pariſh of the ſaid* Hingham, *and in the ſaid deed deſcribed, to the uſe and upon the truſt, that the rents and profits thereon be for ever appropriated to the ſupport of a ſchool, in the ſaid north pariſh of* Hingham, *for the inſtruction of ſuch youth, in ſuch arts, languages and branches of ſcience as are particularly mentioned, enumerated and deſcribed in the ſaid deed. And whereas the execution of the generous and important deſign of inſtituting the ſaid ſchool will be attended with great embarraſſments, unleſs by an act of incorporation, the Truſtees mentioned in the ſaid deed, and their ſucceſſors, ſhall be authorized to commence and proſecute actions at law, and tranſact ſuch other matters in their corporate capacity, as the intereſt of the ſaid ſchool ſhall require:*

Derby School eſtabliſhed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That there be, and there hereby is eſtabliſhed, in the north pariſh of *Hingham*, in the county of *Suffolk*, a ſchool, by the name of *Derby School*, for the promotion of virtue, and inſtruction of ſuch youth of each ſex, in ſuch arts, languages and branches of ſcience, as are reſpectively and ſeverally mentioned, enumerated and deſcribed, by a deed of leaſe and releaſe, made and executed on the twenty-firſt day of *October* laſt paſt, by and between *Sarah Derby*, of *Hingham*, aforeſaid, widow, on the one part, and the Reverend *Ebenezer Gay*, the Rev. *Daniel Shute*, *John Thaxter*, Eſq. the Hon. *Benjamin Lincoln*, Eſq. all of the ſaid *Hingham*; the Hon. *Cotton Tufts*, of *Weymouth*, and the Hon. *Richard Cranch*, of *Braintree*, both in the ſaid county of *Suffolk*, Eſq'rs. the Hon. *William Cuſhing*, and the Hon. *Nathan Cuſhing*, both of *Scituate*, in the county of *Plymouth*, Eſq'rs. *John Thaxter*, of *Haverhill*, in the county of *Eſſex*, Eſq. and *Benjamin Lincoln*, of *Boſton*, in the ſaid county of *Suffolk*, gentleman, on the other part.

Truſtees appointed and incorporated.

II. *Be it further enacted by the authority aforeſaid*, That the aforementioned *Ebenezer Gay*, *Daniel Shute*, *John Thaxter*, *Benjamin Lincoln*, *Cotton Tufts*, *Richard Cranch*, *William Cuſhing*, *Nathan Cuſhing*, *John Thaxter*, and *Benjamin Lincoln*, be, and they hereby are nominated and appointed Truſtees of the ſaid ſchool; and they are hereby incorporated into a body politick, by the name of the Truſtees of *Derby School*, and they and their ſucceſſors ſhall be and continue a body politick and corporate, by the ſame name forever.

Lands, &c. given by Sarah Derby, confirmed to the Truſtees forever.

III. *Be it further enacted by the authority aforeſaid*, That all the lands and buildings which by the aforementioned deed of leaſe and releaſe were given, granted and conveyed by the aforementioned *Sarah Derby*, unto the ſaid *Ebenezer Gay*, *Daniel Shute*, *John Thaxter*, *Benjamin Lincoln*, *Cotton Tufts*, *Richard Cranch*, *William Cuſhing*,

Cuſhing, *Nathan Cuſhing*, *John Thaxter*, and *Benjamin Lincoln*, and to their heirs, be, and they hereby are confirmed to the ſaid *Ebenezer Gay*, and others laſt named, and to their ſucceſſors, as Truſtees of *Derby School*, forever, for the uſes, intents and purpoſes, and upon the truſts which in the ſaid deed of leaſe and releaſe are expreſſed; and the Truſtees aforeſaid, their ſucceſſors, and the officers of the ſaid ſchool, are hereby required in conducting the concerns thereof, and in all matters relating thereto, to regulate themſelves conformably to the true deſign and intention of the ſaid *Sarah Derby*, as expreſſed in the deed abovementioned.

Truſtees to have one common ſeal.

IV. *Be it further enacted by the authority aforeſaid*, That the ſaid Truſtees and their ſucceſſors, ſhall have one common ſeal, which they may make uſe of in any cauſe or buſineſs that relates to the ſaid office of Truſtees of the ſaid School; and they ſhall have power and authority to break, change and renew the ſaid ſeal from time to time, as they ſhall ſee fit; and they may ſue and be ſued in all actions, real, perſonal and mixed, and proſecute and defend the ſame, to final judgment and execution, by the name of the Truſtees of *Derby School*.

Truſtees and their ſucceſſors, to be the ſole viſitors, &c.

V. *Be it further enacted by the authority aforeſaid*, That the ſaid *Ebenezer Gay*, and others, the Truſtees aforeſaid, and their ſucceſſors, the longeſt livers and ſurvivors of them, be the true and ſole Viſitors, Truſtees, and Governours of the ſaid *Derby School*, in perpetual ſucceſſion forever, to be continued in the way and manner hereafter ſpecified, with full power and authority to elect a Preſident, Secretary and Treaſurer, and ſuch officers of the ſaid School as they ſhall judge neceſſary and convenient; and to make and ordain ſuch laws, rules and orders, for the good government of the ſaid School, as to them the Truſtees, Governours and Viſitors aforeſaid, and their ſucceſſors, ſhall from time to time, according to the various occaſions and circumſtances, ſeem moſt fit and requiſite; all which ſhall be obſerved by the officers, ſcholars and ſervants of the ſaid School, upon the penalties therein contained. *Provided notwithſtanding*, That the ſaid rules, laws and orders, be no ways contrary to the laws of this Commonwealth.

To elect officers, make laws, &c.

Proviſo.

Number for Truſtees.

VI. *Be it further enacted by the authority aforeſaid*, That the number of the ſaid Truſtees and their ſucceſſors, ſhall not at any one time, be more than eleven nor leſs than nine, five of whom ſhall conſtitute a quorum for tranſacting buſineſs; and a major part of the members preſent ſhall decide all queſtions that ſhall come before them; that the principal preceptor for the time being ſhall be ever one of them, that a major part ſhall be laymen and reſpectable freeholders of this Commonwealth, and never more than four of the ſaid Truſtees or their ſucceſſors, ſhall belong to, or be inhabitants of the town of *Hingham*, aforementioned. And to perpetuate the ſucceſſion of the ſaid Truſtees:

Surviving Truſtees to ſupply vacancies occaſioned by death, &c.

VII. *Be it further enacted by the authority aforeſaid*, That as often as one or more of the Truſtees of *Derby School* ſhall die or reſign, or in the judgment of the major part of the ſaid Truſtees

be rendered by age or otherwiſe, incapable of diſcharging the duties of his office, then and ſo often the Truſtees then ſurviving and remaining, or the major part of them, ſhall elect one or more perſons to ſupply the vacancy or vacancies.

Truſtees rendered capable to receive land, by gift, &c.

VIII. *Be it further enacted by the authority aforeſaid*, That the Truſtees aforeſaid, and their ſucceſſors, be, and they hereby are rendered capable in law, to take and receive by gift, grant, deviſe, bequeſt or otherwiſe, any lands, tenements or other eſtate, real and perſonal, provided that the annual income of the ſaid real eſtate ſhall not exceed the ſum of *three hundred pounds*; and the annual income of the ſaid perſonal eſtate ſhall not exceed the ſum of *ſeven hundred pounds*; both ſums to be valued in ſilver, at the rate of *ſix ſhillings* and *eight pence* by the ounce; to have and to hold the ſame to them the ſaid Truſtees, and their ſucceſſors, on ſuch terms and under ſuch proviſions and limitations as may be expreſſed in any deed or inſtrument of conveyance to them made. *Provided always*, That neither the ſaid Truſtees nor their ſucceſſors, ſhall ever hereafter receive any grant or donation, the condition whereof ſhall require them or any others concerned, to act in any reſpect counter to the deſign of the afore-mentioned *Sarah Derby*, as expreſſed in the afore-mentioned deed or any prior donation; and all deeds and inſtruments which the ſaid Truſtees may lawfully make, ſhall, when made in the name of the ſaid Truſtees, and ſigned and delivered by the Treaſurer, and ſealed with the common ſeal, bind the ſaid Truſtees and their ſucceſſors, and be valid in law.

Proviſo.

Truſtees empowered to determine times and places of meetings, &c.

IX. *Be it further enacted by the authority aforeſaid*, That the aforeſaid Truſtees ſhall have full power and authority to determine at what times and places their meetings ſhall be holden; and upon the manner of notifying the Truſtees to convene at ſuch meetings, and alſo upon the method of electing or removing Truſtees; and the ſaid Truſtees ſhall have full power and authority to aſcertain and preſcribe from time to time, the powers and duties of their ſeveral officers, and to fix and aſcertain the tenures of their reſpective offices.

Samuel Niles, Eſq. to fix the time for the firſt meeting.

X. *Be it further enacted by the authority aforeſaid*, That *Samuel Niles*, Eſq. be, and he hereby is authorized and empowered, to fix the time and place for holding the firſt meeting of the ſaid Truſtees, and to certify them thereof.

[This act paſſed *November* 11, 1784.]

An

An Act to incorporate certain Phyſicians, by the Name of, *The* Maſſachuſetts *Medical Society.*

AS health is eſſentially neceſſary to the happineſs of ſociety, and as its preſervation or recovery are cloſely connected with the knowledge of the animal economy, and of the properties and effects of medicines; and as the benefit of medical inſtitutions, formed on liberal principles, and encouraged by the patronage of the law, are univerſally acknowledged: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *Nathaniel Walker Appleton, William Baylies, Benjamin Curtis, Samuel Danforth, Aaron Dexter, Shirley Erving, John Frink, Joſeph Gardner, Samuel Holten, Edward Auguſtus Holyoke, Ebenezer Hunt, Charles Jarvis, Thomas Kaſt, Giles Crouch Kellogg, John Linn, James Lloyd, Joſeph Orne, James Pecker, Oliver Preſcott, Charles Pyncheon, Iſaac Rand,* ſenior, *Iſaac Rand, Micaijah Sawyer, John Sprague,* ſenior, *Charles Stockbridge, John Barnard Swett, Cotton Tufts, John Warren, Thomas Welſh, Joſeph Whipple, William Whiting,* be, and they hereby are formed into, conſtituted and made a body politic and corporate, by the name of THE MASSACHUSETTS MEDICAL SOCIETY; and that they and their ſucceſſors, and ſuch other perſons as ſhall be elected in the manner hereafter mentioned, ſhall be and continue a body politic and corporate, by the ſame name forever. Members of the Maſſachuſetts Medical Society incorporated.

II. *And be it enacted by the authority aforeſaid,* That the Fellows of ſaid ſociety may from time to time elect a Preſident, Vice-Preſident and Secretary, with other officers as they ſhall judge neceſſary and convenient; and they the Fellows of ſaid ſociety, ſhall have full power and authority, from time to time, to determine and eſtabliſh the names, number and duty of their ſeveral officers, and the tenure or eſtate they ſhall reſpectively have in their offices, and alſo to authorize and empower their Preſident or ſome other officer to adminiſter ſuch oaths to ſuch officers, as they, the Fellows of ſaid ſociety ſhall appoint and determine for the well-ordering and good government of ſaid ſociety, provided the ſame be not repugnant to the laws of this Commonwealth. Fellows empowered to chooſe their officers, &c.

III. *And be it enacted by the authority aforeſaid,* That the Fellows of ſaid ſociety ſhall have one common ſeal, and power to break, change and renew the ſame at their pleaſure. To have one common ſeal.

IV. *And be it enacted by the authority aforeſaid,* That they the Fellows of ſaid ſociety, may ſue and be ſued in all actions real, perſonal or mixed, and proſecute and defend the ſame unto final judgment and execution, by the name of THE MASSACHUSETTS MEDICAL SOCIETY. Subject to ſue or be ſued.

V. *And be it enacted by the authority aforeſaid,* That the Fellows of ſaid ſociety, may from time to time elect ſuch perſons to be Fellows thereof, as they ſhall judge proper; and that they, the Fellows of ſaid ſociety, ſhall have power to ſuſpend, expel, or diſfranchiſe any Fellows of ſaid ſociety. Perſons to be elected by the Fellows.

VI.

Fellows of ſaid Society empowered to make ſuch laws as are not repugnant to the laws of this Commonwealth.

VI. *And be it enacted by the authority aforeſaid*, That the Fellows of ſaid ſociety, ſhall have full power and authority to make and enact ſuch rules and by-laws for the better government of ſaid ſociety, as are not repugnant to the laws of this Commonwealth; and to annex reaſonable fines and penalties to the breach of them, not exceeding the ſum of *twenty pounds*, to be ſued for and recovered by ſaid ſociety, and to their own uſe, in any Court of record within this Commonwealth proper to try the ſame; and alſo to eſtabliſh the time and manner of convening the Fellows of ſaid ſociety; and alſo to determine the number of Fellows that ſhall be preſent, to conſtitute a meeting of ſaid ſociety; and alſo, that the number of ſaid ſociety, who are inhabitants of this Commonwealth, ſhall not at any one time be more than ſeventy, nor leſs than ten; and that their meetings ſhall be held in the town of *Boſton*, or ſuch other place within this Commonwealth, as a majority of the members preſent in a legal meeting, ſhall judge moſt fit and convenient.

Where their meetings are to be held.

And whereas it is clearly of importance, that a juſt diſcrimination ſhould be made between ſuch as are duly educated and properly qualified for the duties of their profeſſion, and thoſe who may ignorantly and wickedly adminiſter medicine, whereby the health and lives of many valuable individuals are endangered, or perhaps loſt to the community:

Preſident and Fellows empowered to examine all candidates for the practice of phyſick, &c.

VII. *Be it therefore enacted by the authority aforeſaid*, That the Preſident and Fellows of ſaid ſociety, or other ſuch of their officers or Fellows as they ſhall appoint, ſhall have full power and authority to examine all candidates for the practice of phyſic and ſurgery, (who ſhall offer themſelves for examination, reſpecting their ſkill in their profeſſion,) and if upon ſuch examination, the ſaid candidates ſhall be found ſkilled in their profeſſion, and fitted for the practice of it, they ſhall receive the approbation of the ſociety in letters, teſtimonial of ſuch examination, under the ſeal of the ſaid ſociety, ſigned by the Preſident, or ſuch other perſon or perſons as ſhall be appointed for that purpoſe.

In caſe of refuſal—

Penalty.

VIII. *And be it further enacted by the authority aforeſaid*, That if the ſaid Preſident, and ſuch other perſon or perſons ſo elected and appointed for the purpoſe of examining candidates as aforeſaid, ſhall obſtinately refuſe to examine any candidate ſo offering himſelf for examination as aforeſaid, each and every ſuch perſon ſo elected and appointed as aforeſaid, ſhall be ſubject to a fine of *one hundred pounds*, to be recovered by the ſaid candidate, and to his own uſe, in any Court within this Commonwealth, proper to try the ſame.

Fellows of ſaid ſociety deemed capable in law of having, holding and taking in the fee ſimple.

IX. *And be it further enacted by the authority aforeſaid*, That the Fellows of ſaid ſociety, may and ſhall forever be deemed capable in law of having, holding and taking in fee ſimple, or any leſs eſtate by gift, grant or deviſe, or otherwiſe, any land, tenement or other eſtate, real or perſonal; provided that the annual income of the whole real eſtate that may be given, granted or deviſed to, or purchaſed by the ſaid ſociety, ſhall not exceed the ſum of *two hundred pounds*, and the annual income or intereſt of ſaid perſonal eſtate, ſhall not exceed the ſum of *ſix hundred pounds*; all the ſums mentioned

tioned in this act, to be valued in ſilver at *ſix ſhillings* and *eight pence* per ounce: And the annual income or intereſt of the ſaid real and perſonal eſtate, together with the fines and penalties paid to ſaid ſociety, or recovered by them, ſhall be appropriated to ſuch purpoſes as are conſiſtent with the end and deſign of the inſtitution of ſaid ſociety, and as the Fellows thereof ſhall determine.

X. *And be it further enacted*, That the firſt meeting of the ſaid Medical Society, ſhall be held in ſome convenient place in the town of *Boſton*; and that *Edward Auguſtus Holyoke*, Eſq. be, and he hereby is authorized and directed to fix the time for holding the ſaid meeting, and to notify the ſame to the Fellows of ſaid Medical Society.

Edward Auguſtus Holyoke, Eſq. authorized to call the firſt meeting.

[This act paſſed *November* 1, 1781.]

An Act for incorporating certain Perſons therein named, into a Society by the Name of The *Boſton* Epiſcopal Charitable Society.

WHEREAS a number of perſons, members of the Epiſcopal church, did in the year one thouſand ſeven hundred and twenty-four, in the town of Boſton, *form themſelves into a ſociety for charitable purpoſes, which ſociety ſtill continuing, have raiſed a very conſiderable ſtock, out of which they have from time to time contributed to the laudable purpoſes aforeſaid; and the perſons ſo aſſociated, finding themſelves under difficulties for want of an incorporation, and having petitioned this Court for an act remedial of ſuch difficulties; and the intentions of the ſaid perſons appearing to this Court deſerving encouragement:*

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That *John Rowe, Stephen Greenleaf, Ralph Inman, Daniel Hubbard, John Cutler, Richard Greene, John Haſkins, Benjamin Greene, Nathaniel Greene, Joſeph Greene, Thomas Ivers, James Perkins*, Reverend *Samuel Parker, Thomas Kaſt, John Amory, junior, William Turner, Oliver Smith, Samuel Dunn, junior, William Tudor, James Lloyd, Thomas Amory, George Luſh, Jabez Hatch, James Freeman, Samuel Wallis, Joſeph Head*, and *Samuel Smith*, the members of the ſaid ſociety, be, and they hereby are incorporated, and made a body politic, for the aforeſaid purpoſes, by the name of The Boston Episcopal Charitable Society, and that they, their aſſociates and ſucceſſors, have perpetual ſucceſſion by the ſaid name, and have power to make by-laws for the preſervation and advancement of the ſaid ſociety, not repugnant to the laws of this Commonwealth, with penalties either of diſfranchiſement from the ſaid ſociety, or of a mulct not exceeding *twenty ſhillings*, or without penalties, as ſhall ſeem moſt meet.

Members of the epiſcopal ſociety incorporated into a body politic.

To make by-laws not repugnant to the laws of this Commonwealth.

II. *And be it further enacted*, That the ſaid *Boſton* Epiſcopal Charitable Society, be, and they hereby are authorized and empowered, to make, appoint and have a common ſeal; and are here-

Society to have one common ſeal, and to ſue and be ſued.

by made liable to be ſued and enabled to ſue and defend in their ſaid corporate capacity, in any of the Courts of record or other Courts of law of this Commonwealth ; and are hereby licenced and empowered to make purchaſes, and to receive grants and donations of real and perſonal eſtates, and to hold the ſame for the charitable purpoſes aforeſaid, provided the rents of the real eſtate, together with the intereſt of the perſonal eſtate, ſhall not exceed the ſum of *nine hundred pounds*, and to manage and diſpoſe of ſuch eſtates as to the ſaid corporation ſhall appear fit.

Society empowered to aſſemble and elect a Preſident, Vice Preſident, Treaſurer and ſix Truſtees, and ſuch other officers as they ſhall judge ſuitable.

III. *And be it further enacted by the authority aforeſaid,* That the ſaid ſociety, be, and they hereby are inveſted with full power and authority, to aſſemble on any one Tueſday in either of the months of *March* or *April* next, for the purpoſe of appointing a Preſident, Vice-Preſident, Treaſurer, and ſix Truſtees, together with ſuch other officers as by them ſhall be adjudged ſuitable, and to appoint their common ſeal, and to make by-laws within the reſtrictions aforeſaid ; and the ſaid officers ſo appointed, ſhall continue until others ſhall be appointed in their room. And the ſaid ſociety ſhall meet on any one Tueſday in either of the months of *March* or *April*, as they ſhall from time to time, or at any time, agree, annually, afterwards, at *Boſton*, for the purpoſe of chooſing a Preſident, Vice-Preſident, Treaſurer, and ſix Truſtees, and ſuch other officers as they ſhall think proper ; and to make, alter or annul their by-laws. And if by reaſon of any emergency, the buſineſs of this annual aſſembly cannot be compleated on the ſaid day, they may adjourn once to a ſhort day to finiſh it, and no more ; and the ſaid ſociety may aſſemble as often as they may agree on, for tranſacting all other buſineſs. And whenever any of the officers of the ſaid ſociety ſhall die, or be diſabled, or remove out of this State, the members of the ſaid ſociety, are hereby authorized and empowered, at their next meeting, to elect and appoint others in the room of the officers ſo removed. And all inſtruments which the ſaid ſociety ſhall lawfully make and execute, ſhall, when in the name of the ſaid ſociety, and purſuant to the rules thereof, being ſigned and delivered b the Preſident, Vice-Preſident, or Treaſurer, or ſuch other perſon as the ſaid ſociety ſhall appoint, and ſealed with their common ſeal, bind the ſaid ſociety, and be valid in law.

Time fixed for meeting.

Proviſo.

IV. *Provided always, and it is further enacted,* That the members of the ſaid ſociety, ſhall at no time exceed the number of one hundred. And the Governour of this Commonwealth, is hereby authorized and empowered, to give a charter of incorporation, under the ſeal of the Commonwealth, to the aforementioned perſons and their aſſociates, accordingly.

Proviſo.

Provided alſo, That nothing contained in this act ſhall be conſtrued, as implying any degree of ſubjection of the ſociety by this act incorporated, or of any other ſociety in this Commonwealth, to any foreign potentate, prelate, or juriſdiction whatſoever.

[This act paſſed *February* 12, 1784.]

An

An Act incorporating a Society, by the Name of The *Maſſachuſetts* Congregational Charitable Society.

WHEREAS a number of congregational Miniſters, within this Commonwealth, have petitioned, and it appears to the General Court expedient, that a number of perſons be incorporated into a ſociety, for the humane and benevolent purpoſes of affording relief and ſupport to the widows and children of deceaſed Miniſters, and other perſons herein mentioned: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *Thomas Bernard*, Clerk, *Stephen Choate*, Eſq. *Caleb Davis*, Eſq. *Benjamin Goodhue*, Eſq. *Nathaniel Gorham*, Eſq. *John Hancock*, Eſq. *Jaſon Haven*, Clerk, *Timothy Hilliard*, Clerk, *Simeon Howard*, Doctor of Divinity, *Joſeph Jackſon*, Clerk, *John Lathrop*, Doctor of Divinity, *Phillips Payſon*, Clerk, *William Phillips*, Eſq. *Samuel Phillips*, jun. Eſq. *Daniel Shute*, Clerk, *Caleb Strong*, Eſq. *James Sullivan*, Eſq. *Peter Thacher*, Clerk, *Oliver Wendell*, Eſq. and *Joſeph Willard*, Doctor of Divinity, be, and they are hereby incorporated into a ſociety, by the name, ſtile and title of THE MASSACHUSETTS CONGREGATIONAL CHARITABLE SOCIETY; and that they, and ſuch others as ſhall be duly elected into the ſaid corporation, ſhall be and remain a body politick and corporate, by the ſame name, ſtile and title, forever. Society incorporated.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid ſociety and corporation, ſhall be capable of receiving, and ſhall have power to receive, from any perſon or perſons diſpoſed to aid the benevolent purpoſes of this inſtitution, any grants or deviſes of lands or tenements, in fee ſimple, or for a leſſer eſtate, and all donations and bequeſts of money, or any other perſonal thing; and to uſe and improve the ſame for the purpoſes, and according to the directions herein mentioned and provided. Empowered to receive and improve grants & deviſes of lands, &c.

III. *And be it further enacted by the authority aforeſaid,* That all grants, donations, deviſes and bequeſts, made to the ſaid ſociety, of any real or perſonal eſtate, ſhall be by the ſaid ſociety uſed and improved to the beſt advantage; and the annual income thereof, ſhall be by them applied to the ſupport of ſuch widows and children of deceaſed congregational miniſters, who have been, or ſhall be ſettled within this Commonwealth, and of the widows and children of the Preſident and Profeſſors of the Univerſity in *Cambridge*, as in the opinion of the ſaid corporation, ſhall be proper objects of the ſaid charity. How improved and applied.

Provided nevertheleſs, That the ſaid ſociety, if at any time they ſhall judge it will beſt anſwer the good purpoſes of their inſtitution, may increaſe their capital, by placing a part of the ſaid income at intereſt, or by purchaſing real eſtate therewith; and they ſhall have power alſo to take a part of the principal of their perſonal eſtate, and beſtow it on the widows and children before mentioned, if it is conſiſtent with the directions of the donor. Proviſo.

IV. *And be it further enacted by the authority aforeſaid,* That the ſaid ſociety and corporation ſhall, at their annual meeting in *May*, Empowered to elect members.

May, have power to elect by ballot, any other perſon or perſons, as members of the ſaid ſociety:

Proviſo. *Provided always*, That the ſaid ſociety ſhall not at any time conſiſt of more than thirty members: *Provided alſo*, That the ſame proportion be obſerved in the ſaid elections, between the clergy and the laity, which is obſerved in this act.

May change real property into perſonal eſtate. V. *And be it further enacted*, That when it ſhall appear to the ſaid ſociety, that the changing any real property into perſonal eſtate, will beſt anſwer the intentions of this inſtitution, the ſaid corporation ſhall have full power, unleſs it is expreſsly ordered otherwiſe by the donor, to ſell and convey the ſame; provided that the monies for which the ſaid real eſtate ſhall be ſold, ſhall always be applied to the ſame uſe, to which the income of the eſtate ſold, was before applicable.

To have one common ſeal. VI. *And be it further enacted*, That the ſaid ſociety may have one common ſeal, which they may change and renew at pleaſure; and that all deeds, conveyances and grants, covenants and agreements made by their Treaſurer, or any other perſon, by their authority and direction, according to their inſtitution, ſhall be good and valid; and the ſame corporation ſhall at all times have power to ſue, and may be ſued, and may defend, and ſhall be held to anſwer, by the name, ſtile and title aforeſaid.

Meeting to be held annually, for the choice of officers, &c. VII. *Be it further enacted*, That the ſaid ſociety ſhall hereafter meet at *Boſton*, or ſuch other place as they may think proper within the State, ſome time in the month of *May* annually, and as much oftner as they may judge expedient; and any ſeven members of the ſaid corporation, the Preſident, Vice-Preſident, Treaſurer or Secretary, being one, ſhall be a *quorum*; and the ſaid ſociety, at their meetings in *May*, annually, ſhall have power to elect and chooſe a Preſident, Vice-Preſident, Treaſurer, Secretary, and all other ſuch officers as to them ſhall appear neceſſary: which officers ſo choſen ſhall continue in office one year: and all officers ſo choſen ſhall be under oath to the faithful performance of the duties of their offices reſpectively.

Veſted with the power of making by-laws. Proviſo. VIII. *And be it further enacted*, That the ſaid ſociety hereby are, and forever ſhall be veſted with the power of making by-laws for the more orderly managing the buſineſs of the corporation; provided ſuch laws are not repugnant to the laws of the Commonwealth, or the principles of the conſtitution of the ſame; nor ſhall any penalty by them provided, exceed the ſum of *twenty ſhillings*.

Rents, &c. not to exceed 300l. per annum. *And it is nevertheleſs provided*, That the rents of the real eſtate, together with the intereſt of the perſonal eſtate of the ſaid ſociety, ſhall never exceed the annual income of *three thouſand pounds*.

Dr. Howard authorized to call the firſt meeting. IX. *And it is further enacted*, That *Simeon Howard*, Doctor of Divinity, be, and he hereby is authorized, by publick notification, in two of the *Boſton* news-papers, to call the firſt meeting of the ſaid ſociety, at ſuch time and place as he ſhall judge proper; at which meeting, the ſaid corporation ſhall have all the power hereby veſted in them at their annual ſtated meetings in *May*; but the officers by them choſen ſhall not continue in office longer than the next *May* meeting, unleſs they ſhall be elected anew.

[This act paſſed *March* 24, 1786.]

An Act to incorporate certain Perſons, by the Name of the Society for propagating the Goſpel among the Indians and others, in *North-America.*

WHEREAS divers perſons have petitioned this Court for an act of incorporation, whereby they may be the better enabled to carry into effect their deſign of propagating the Goſpel among the Indians and others in North-America, *and it is reaſonable that the prayer of the ſaid petition ſhould be granted: Therefore to promote and encourage the ſame,* Preamble.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *Richard Cranch,* of *Braintree,* Eſq. Rev. *John Clark,* of *Boſton, Francis Dana,* of *Cambridge,* Eſq. Rev. *Joſeph Eckly,* and *John Elliot,* of *Boſton,* Rev. *Nathaniel Emmons,* of *Franklin,* Rev. *Levi Friſbe,* of *Ipſwich, Moſes Gill,* of *Princeton,* and *William Hyſlop,* of *Brookline,* Eſq'rs. Rev. *Timothy Hilliard,* of *Cambridge, Jonathan Maſon,* of *Boſton,* Eſq. Rev. *Phillips Payſon,* of *Chelſea,* Rev. *Eliphalet Porter,* and *Increaſe Sumner,* Eſq. of *Roxbury, Ebenezer Storer,* Eſq. Rev. *Peter Thacher,* and *Oliver Wendell,* Eſq. of *Boſton,* Rev. *Joſeph Willard* and *Edward Wiggleſworth,* and *Samuel Williams,* Doctor of Laws, of *Cambridge,* and the Rev. *Ebenezer Wight,* of *Boſton,* be, with ſuch others as they ſhall elect, and they hereby are incorporated, and made a body politic, for the purpoſe aforeſaid, by the name of THE SOCIETY FOR PROPAGATING THE GOSPEL AMONG THE INDIANS, AND OTHERS, IN NORTH-AMERICA; and the Society aforeſaid, ſhall have perpetual ſucceſſion, and may have a common ſeal, which it ſhall be lawful for them to change, break, alter and make new at pleaſure, and may purchaſe and hold in ſucceſſion, lands, tenements, and real eſtate of any kind, the annual income and profits whereof not to exceed the value of *two thouſand pounds.* And the ſaid Society is hereby enabled to take and receive ſubſcriptions of charitably diſpoſed perſons, and may take any perſonal eſtate in ſucceſſion; and and all donations to the Society, either by ſubſcriptions, legacy or otherwiſe, excepting ſuch as may be differently appropriated by the donors, ſhall make a part of, or be put into the capital ſtock of the Society, which ſhall be put out on intereſt, on good ſecurity, or otherwiſe improved to the beſt advantage, and the income or profits applied to the purpoſes of propagating the Goſpel among the ſaid Indians, in ſuch manner as they ſhall judge moſt conducive to anſwer the deſign of their inſtitution; and alſo among other people, who through poverty or other circumſtances, are deſtitute of the means of religious inſtruction: And the ſaid Society is hereby empowered to give ſuch inſtructions, orders and encouragements to their officers, and thoſe they ſhall employ, as they ſhall judge neceſſary; and the perſons employed as teachers in any capacity, ſhall be men of the proteſtant religion, of reputed piety, loyalty, prudence,

Certain perſons incorporated.

Society to have perpetual ſucceſſion.

Enabled to take and receive ſubſcriptions.

Perſons employed as teachers, to be of the proteſtant religion.

dence, knowledge and literature, and of other Chriſtian and neceſſary qualifications ſuited to their reſpective ſtations.

Time and place for holding the firſt meeting.

II. *And be it further enacted by the authority aforeſaid*, That the ſaid Society ſhall meet at ſome convenient place in the town of *Boſton*, on the firſt Thurſday of *December* next, and then chuſe a Preſident, Vice-Preſident, Treaſurer and Secretary, and ſuch other officers as they ſhall judge proper, and may make by-laws and orders, for the regulation of the ſaid Society; provided ſuch by-laws and orders be not repugnant to the laws of the land, and act upon all matters which they apprehend needful, to promote the end of their inſtitution: And the officers ſo choſen, ſhall continue in their office, until the Thurſday next ſucceeding the laſt Wedneſday of *May* next following the time of their appointment.

Time of holding general meetings.

III. *And be it further enacted*, That there ſhall be a general meeting of the members of the ſaid Society, at *Boſton*, aforeſaid, or in any other place within this Commonwealth, (unleſs ſome extraordinary occurrence prevent the ſame) on the Thurſday aforeſaid in *May*, and firſt Thurſday of *November*, yearly, forever, and oftner if needful, when and where the ſaid Society ſhall think fit; and any ſeven of the members (the Preſident, Vice-Preſident, Treaſurer or Secretary always to be one) being convened at the ſaid times and places, are hereby declared to be a quorum of the ſaid general meeting; and the ſaid Society at their general meeting in *May* in every year (and in caſe of any extraordinary occurrence preventing their meeting, then at their next general meeting after) ſhall out of their own body, by a majority of the members preſent, elect a Preſident, Vice-Preſident, Treaſurer and Secretary, and ſuch other officers as they ſhall find needful, to continue in office until the *May* meeting next following their appointment, or until others be choſen to ſucceed them; and all the officers aforeſaid, before they ſhall be qualified to act, ſhall be under oath, for the faithful performance of their reſpective truſts; and the ſaid Society, at their firſt, or any other ſtated meeting, (and at no other) may elect into their body, ſuch perſons as they ſhall judge qualified, to aſſiſt them in their good deſign; provided the whole number of the ſaid Society, ſhall at no time exceed fifty members; and may appoint committees, to proſecute the orders of any general-meeting, audit the Treaſurer's accounts, and prepare matters for the Society to act upon; and ſuch committees ſhall exhibit an account of their proceedings, at the general meetings of ſaid Society.

Officers ſhall be under oath.

Society declared capable of proſecuting actions, &c.

IV. *And be it enacted*, That the Society aforeſaid, by the name aforeſaid, ſhall be, and is hereby declared to be capable to proſecute, purſue, and defend, in all Courts and places, and before all proper judges whatſoever, all actions, cauſes, proceſſes and pleas, of what kind or nature ſoever, in the fulleſt and ampleſt manner; and if it ſhall happen that the ſaid Society ſhall become ſeized of lands, or tenements by mortgage, as ſecurity for the payment of any debts, or by levying executions on lands for diſcharge of debts, due to the ſaid Society, it ſhall be lawful for the ſaid Society, by deed under the

the hand and ſeal of their Preſident, for the time being, to ſell and convey the lands acquired in either of the two mentioned ways; provided that no ſuch ſale ſhall be made, or concluded on, but at ſome general ſtated meeting.

V. *And be it further enacted*, That the ſaid Society, be, and hereby is empowered, upon the death of their Preſident, Vice-Preſident, Treaſurer, Secretary, or any other officer, to chooſe others at any ſtated general meeting, to ſucceed them; and may alſo remove any of their officers, when they ſhall judge expedient, and appoint others to ſucceed them therein. *Provided always*, That no member ſhall be removed, or officers diſplaced, unleſs at one of the ſtated general meetings as aforeſaid.

Society may remove any of the officers.

Proviſo.

And to the end, that the members of the ſaid Society, and all contributors to the ſaid deſign, may know the ſtate of the Society's ſtock, and the diſpoſitions of the profits thereof, and of all the donations made to the ſaid Society:

VI. *Be it further enacted*, That a particular account of ſuch ſtock and diſpoſition, ſhall be exhibited by the Treaſurer, at every ſtated general meeting; which accounts, the Secretary, or a committee of the ſaid Society, (having examined the ſame) ſhall certify to be true; and fair entries ſhall be made in proper books, to be provided for that purpoſe, of all donations made to the ſaid Society, and of all the eſtate, both real and perſonal, belonging to the Society, and of the incomes thereof, and alſo of all tranſactions, either by themſelves, their officers, or committees, for, or on account of the ſaid Society; and the ſaid books ſhall be brought to the ſtated general meetings of the Society, and be there open for the peruſal and examination of the members.

Account of ſtock, &c. ſhall be exhibited at every general meeting.

VII. *And it is further enacted*, That *Moſes Gill*, Eſq. be, and he hereby is authorized, by publick notification, in *Adams* and *Nourſe's* Independent Chronicle, to call the firſt meeting of the ſaid Society, at ſuch time and place, in the town of *Boſton*, as he ſhall judge proper.

Moſes Gill, Eſq. to call the firſt meeting.

[This act paſſed *November* 19, 1787.]

An

An Act for incorporating certain Perſons for the Purpoſe of building a Bridge over *Charles-River*, between *Boſton* and *Charleſtown*, and ſupporting the ſame during the Term of forty Years.

Preamble.

WHEREAS the erecting a Bridge over Charles-River, *in the place where the Ferry between* Boſton *and* Charleſtown *is now kept, will be of great publick utility, and* Thomas Ruſſell, *Eſq. and others, having petitioned this Court for an act of incorporation to empower them to build the ſaid Bridge, and many perſons under the expectation of ſuch an act, have ſubſcribed to a fund for executing and compleating the aforeſaid purpoſe:*

Proprietors incorporated.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the Hon. *John Hancock*, Eſq. *Thomas Ruſſell, Nathaniel Gorham, James Swan*, and *Eben Parſons*, Eſquires, ſo long as they ſhall continue to be Proprietors in the ſaid fund, together with all thoſe who are, and thoſe who ſhall become Proprietors to the ſaid fund or ſtock, ſhall be a corporation and body politick, under the name of "THE PROPRIETORS OF CHARLES-RIVER BRIDGE;" and by that name may ſue and proſecute, and be ſued and proſecuted to final judgment and execution, and do and ſuffer all other matters and things which bodies-politick may, or ought to ſuffer or to do; and that the ſaid corporation ſhall, and may have full power and authority to make, have and uſe a common ſeal, and the ſame to break, alter and renew at pleaſure.

Empowered to call meetings.

II. *And be it further enacted by the authority aforeſaid*, That the ſaid *John Hancock, Thomas Ruſſell, Nathaniel Gorham, James Swan*, and *Eben Parſons*, Eſq'rs. or any three of them, may, by advertiſement in any two of the *Boſton* news-papers, warn or call a meeting of the ſaid Proprietors, to be holden at *Boſton* or *Charleſtown* aforeſaid, at any ſuitable time after fifteen days from the publication of the ſaid advertiſement; and the ſaid Proprietors, by a vote of the majority of thoſe preſent, or repreſented at the ſaid meeting, (accounting and allowing a vote to each ſhare in all caſes) ſhall chooſe a Clerk, who ſhall be duly ſworn to the faithful diſcharge of his office, and alſo ſhall agree on a method for calling future meetings,

To eſtabliſh neceſſary rules for regulating the corporation, &c.

and at the ſame or any ſubſequent meeting, may make and eſtabliſh any rules and regulations that ſhall be neceſſary or convenient for regulating the ſaid corporation, effecting, compleating and executing the purpoſes aforeſaid, or for collecting the toll herein-after granted, and the ſame rules and regulations may cauſe to be kept and executed, or for the breach thereof may order and enjoin fines

Proviſo.

and penalties, not exceeding *four pounds*, provided the rules and regulations aforeſaid, are not repugnant to the conſtitution or laws of the Commonwealth; and the ſaid Proprietors may alſo chooſe and appoint any other officer or officers of the corporation that they may deem neceſſary, and all repreſentations at the ſaid meetings ſhall be proved by a ſpecial appointment in writing, ſigned by the perſon making

making his repreſentative, which ſhall be filed with or recorded by the Clerk; and this act, and all rules, regulations and votes of the ſaid corporation, ſhall be fairly and truly recorded by their ſaid Clerk, in a book or books for that purpoſe provided and kept, which book or books ſhall be ſubject to the inſpection of any perſon or perſons for that purpoſe appointed by the Legiſlature.

Rules, regulations and votes, to be recorded by their clerk, ſubject to inſpection.

III. *And be it further enacted by the authority aforeſaid,* That for the purpoſe of re-imburſing the ſaid Proprietors the money expended or to be expended in building and ſupporting the ſaid Bridge, a toll be, and is hereby granted and eſtabliſhed for the ſole benefit of the ſaid Proprietors, according to the rates following, *viz.* Each foot-paſſenger (or one perſon paſſing) *two-thirds* of a *penny*; one perſon and horſe, *two pence two-thirds* of a *penny*; ſingle horſe-cart, or ſled or ſley, *four pence*; wheelbarrows, hand-carts, and other vehicles capable of carrying like weight, *one penny one third* of a *penny*; ſingle horſe and chaiſe, chair or ſulkey, *eight pence*; coaches, chariots, phaetons and curricles, *one ſhilling* each; all other wheel-carriages or ſleds drawn by more than one beaſt, *ſix pence*; ſleys drawn by more than one beaſt, *ſix pence*; neat cattle and horſes paſſing the ſaid Bridge, excluſive of thoſe rode, or in carriages or teams, *one penny one third* of a *penny*; ſwine and ſheep, *four pence* for each dozen, and at the ſame rate for a greater or leſs number; and in all caſes the ſame toll ſhall be paid for all carriages and vehicles paſſing the ſaid Bridge, whether the ſame be loaded or not loaded; and to each team, one man and no more ſhall be allowed as a driver, to paſs free from payment of toll; and in all caſes double toll ſhall be paid on the Lord's day; and at all times when the toll-gatherer ſhall not attend his duty, the gate or gates ſhall be left open. And the ſaid toll ſhall commence at the day of the firſt opening of the ſaid Bridge for paſſengers, and ſhall continue for and during the term of forty years from the ſaid day, and be collected as ſhall be preſcribed by the ſaid corporation.

Toll eſtabliſhed.

Toll to continue forty years.

IV. *And be it further enacted by the authority aforeſaid,* That the ſaid Bridge ſhall be well built, at leaſt forty feet wide, of ſound and ſuitable materials, with a convenient draw or paſſage-way, at leaſt thirty feet wide, and at a proper place, with well-conſtructed, ſubſtantial piers on each ſide, and well planked on the top and ſides with plank proper for ſuch a Bridge; and the ſame ſhall be kept in good, ſafe and paſſable repair, for the term aforeſaid, and at the end of the ſaid term, the ſaid Bridge ſhall be left in like repair: And the ſaid Proprietors ſhall conſtantly keep the ſaid Bridge accommodated with at leaſt twenty good lamps on each ſide the ſame, which ſhall be well ſupplied with oil, and lighted in due ſeaſon, and kept burning till twelve of the clock at night; and alſo at the ſeveral places where the toll ſhall be received, they ſhall erect and conſtantly expoſe to open view, a ſign or board with the rates of toll of all the tollable articles fairly and legibly written thereon, in large or capital letters; and the draw ſhall be lifted for all ſhips and veſſels without toll or pay, except ſuch as uſually paſs under *Cambridge* Bridge, and thoſe paſſing for pleaſure.

Manner in which the bridge ſhall be built.

How accommodated.

Sum allowed *Harvard*-College, annually.

V. *And be it alſo further enacted by the authority aforeſaid,* That after the ſaid toll ſhall commence, the ſaid Proprietors or corporation, ſhall annually pay to *Harvard-College* or Univerſity, the ſum of *two hundred pounds*, during the ſaid term of forty years; and at the end of the ſaid term, the ſaid Bridge ſhall revert to and be the property of the Commonwealth, ſaving to the ſaid College or Univerſity, a reaſonable and annual compenſation for the annual income of the Ferry, which they might have received had not ſaid Bridge been erected.

At the end of 40 years, the bridge to revert to the Commonwealth

VI. *And be it further enacted,* That if the ſaid Proprietors ſhall refuſe or neglect, for the ſpace of three years after the paſſing of this act, to build and compleat the ſaid Bridge, then this act ſhall be void and of no effect.

[This act paſſed *March* 9, 1785.]

An Act for incorporating certain Perſons for the Purpoſe of building a Bridge, where Penny-Ferry has been uſually kept, and for ſupporting the ſame.

Preamble.

WHEREAS the erecting a Bridge over the River, where Penny-Ferry has been uſually kept, will be of great publick utility, and Thomas Ruſſell, *Eſq. and others, have petitioned this Court, for an act of incorporation, to empower them to build the ſaid Bridge, and many perſons under the expectation of ſuch an act, have ſubſcribed to a fund for the purpoſe of erecting and compleating the ſame:*

Proprietors incorporated.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *Thomas Ruſſell,* Eſq. *Richard Devens,* Eſq. *Samuel Swan,* jun. *Jonathan Simpſon,* jun. and *William Tudor,* Eſq. ſo long as they ſhall continue to be Proprietors in the ſaid fund, together with all thoſe who are or ſhall hereafter become Proprietors to the ſaid ſtock or fund, ſhall be a corporation and body politic, under the name of THE PROPRIETORS OF MALDEN BRIDGE; and by that name may ſue and proſecute, and be ſued and proſecuted to final judgment and execution, and do and ſuffer all matters and things which bodies politic may or ought to do and to ſuffer; and that the ſaid corporation ſhall, and may have full power and authority, to make, have and uſe a common ſeal, and the ſame to break and alter at pleaſure.

Proprietors may warn a meeting

II. *And be it further enacted by the authority aforeſaid,* That the ſaid *Thomas Ruſſell,* Eſq. *Richard Devens,* Eſq. *Samuel Swan,* jun. *Jonathan Simpſon,* jun. and *William Tudor,* Eſq; or any three of them, may by advertiſement in any two of the news-papers, warn or call a meeting of the ſaid Proprietors, to be holden at any ſuitable time and place, after fifteen days from the publication of the ſaid advertiſement; and the ſaid Proprietors, by a vote of the majority

majority of thoſe preſent or repreſented at the ſaid meeting (accounting and allowing a vote to each ſingle ſhare in all caſes) ſhall chooſe a Clerk, who ſhall be duly ſworn to the faithful diſcharge of his office; and alſo ſhall agree on a method for calling future meetings; and at the ſame or any ſubſequent meeting, may make and eſtabliſh any rules and regulations, that ſhall be neceſſary or convenient for regulating the ſaid corporation, for effecting, compleating and executing the purpoſes aforeſaid, or for collecting the toll hereafter granted, and the ſame rules and regulations may cauſe to be kept and executed, or for the breach thereof may order and enjoin fines and penalties, not exceeding *four pounds*; *provided* the rules and regulations are not repugnant to the laws or conſtitution of this Commonwealth; and the ſaid Proprietors may alſo chooſe and appoint any other officer or officers of the corporation, that they may deem neceſſary; and all repreſentations at the ſaid meeting ſhall be proved in writing ſigned by the perſon making the ſame, by ſpecial appointment, which ſhall be filed with or recorded by the Clerk; and this act, and all rules, regulations and votes of ſaid corporation, ſhall be fairly and truly recorded by ſaid Clerk, in a book or books for that purpoſe provided and kept.

May eſtabliſh rules and regulations, &c.

Proviſo,

III. *And be it further enacted by the authority aforeſaid*, That for the purpoſe of reimburſing the ſaid Proprietors, the money by them expended or to be expended, in building and ſupporting the ſaid Bridge, a toll be, and is hereby granted and eſtabliſhed for the ſole benefit of the ſaid Proprietors, according to the rates following: For each foot paſſenger, *one penny and one third of a penny*: For each perſon and horſe, *four pence*: For each horſe and cart, *ſix pence*: For each team drawn by more than one beaſt, *nine pence*: For each horſe and chaiſe, *nine pence*: For each coach, chariot, phaeton, and curricle, *eighteen pence*: For each man and wheel-barrow, *two pence two thirds of a penny*: For each horſe and neat cattle, excluſive of thoſe in teams or rode on, *two pence*: For each ſheep and ſwine, *two thirds of a penny*; and toll on Lord's days ſhall be double the above rates; and to each team one perſon and no more ſhall be allowed as a driver, to paſs free from toll; and at the time when the toll-gatherer ſhall not attend his duty, the gate or gates ſhall be left open; and the ſaid toll ſhall commence on the day of the firſt opening of ſaid Bridge, for paſſengers, and ſhall continue forever; provided that when fifty years from the firſt opening ſaid Bridge, are expired, the General Court from thence forward, may regulate the rate of toll; and the ſame ſhall be collected in ſuch manner as ſhall be preſcribed by the ſaid corporation.

Toll granted & eſtabliſhed.

Rates of toll,

IV. *And be it further enacted by the authority aforeſaid*, That the ſaid Bridge ſhall be well built, at leaſt thirty-two feet wide, of good and ſuitable materials, with a good draw or paſſage way, thirty feet wide, through which for veſſels to paſs both by day and by night, and at a ſuitable place, with well conſtructed, ſubſtantial piers on each ſide, and ſhall be well covered with plank or timber on the top, ſuitable for ſuch a Bridge, and the ſame ſhall be built

Bridge ſhall be well built, &c.

two

two feet higher, above high water mark, than *Charles-River* Bridge now is, and ſhall be kept in good and ſafe paſſable repair forever.

Sign or board ſhall be erected, with the rates of toll, &c. fairly written.

V. *And be it further enacted by the authority aforeſaid,* That the ſaid Proprietors ſhall at the ſeveral places where the toll ſhall be received, erect and conſtantly expoſe to open view, a ſign or board, with the rates of toll of all the tollable articles, fairly and legibly written thereon, in large or capital letters; and the draw ſhall be lifted for all veſſels, without toll or pay, except for boats paſſing for pleaſure.

If the proprietors neglect to build, for four years, this act to be void.

VI. *And be it further enacted by the authority aforeſaid,* That if the ſaid Proprietors ſhall neglect or refuſe for the ſpace of four years, after the paſſing this act, to build the ſaid Bridge, then this act ſhall be void, and of none effect.

[This act paſſed *March* 1, 1787.]

An Act for incorporating certain Perſons for the Purpoſe of building a Bridge over the River between *Salem* and *Beverly*, and for ſupporting the ſame.

Preamble.

WHEREAS the erecting a Bridge over the River between Salem *and* Beverly, *from the ferry-ways on* Salem *ſide, to ſome place on* Beverly *ſide, between the extremes of* Green's-Point, *and* Ellinwood's-Wharf, *(ſo called) will be of great publick utility, and very beneficial to the county of* Eſſex, *in particular; and* George Cabot *Eſq. and others, have petitioned this Court for an act of incorporation, to empower them to build the ſaid Bridge, and many perſons, under the expectation of ſuch an act, have ſubſcribed to a fund for the purpoſe of erecting and compleating the ſame:*

Proprietors incorporated a body politic.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *George Cabot*, Eſq. *John Cabot, John Fiſk, Iſrael Thorndike,* and *Joſeph White*, be, and hereby are conſtituted a Corporation for building a Bridge as aforeſaid, ſo long as they ſhall continue to be Proprietors in the fund to be raiſed for that purpoſe, together with all thoſe who are, or ſhall hereafter become Proprietors to the ſaid fund, ſhall be a Corporation and body politic, under the name of THE PROPRIETORS OF ESSEX BRIDGE, and by that name, may ſue and proſecute, and be ſued and proſecuted to final judgment and execution, and to do and ſuffer all other matters and things, which bodies politic, may or ought to do and ſuffer, and that the ſaid Corporation, ſhall and may have full power and authority, to make, have and uſe a common ſeal, and the ſame to break and alter at pleaſure.

Proprietors may call a meeting.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid *George Cabot*, Eſq. *John Cabot, John Fiſk, Iſrael Thorndike,* and *Joſeph White*, or any three of them, may by advertiſement, in any two of the news-papers, call a meeting of the ſaid Proprietors,

to

to be holden at any ſuitable time and place, after fifteen days from the publication of the ſaid advertiſement, and the ſaid Proprietors, by a vote of the majority of thoſe preſent, or repreſented at the ſaid meeting (accounting and allowing a vote to each ſingle ſhare in all caſes) ſhall chooſe a Clerk, who ſhall be duly ſworn to the faithful diſcharge of his office; and alſo ſhall agree on a method for calling future meetings; and at the ſame or any ſubſequent meeting, may make and eſtabliſh any rules and regulations, that ſhall be neceſſary or convenient for regulating the ſaid corporation, for effecting, compleating and executing the purpoſes aforeſaid, or for collecting the toll hereafter granted, and the ſame rules and regulations may cauſe to be kept and executed, or for the breach thereof, may order and enjoin fines and penalties, not exceeding *four pounds*; provided the rules and regulations are not repugnant to the laws or conſtitution of this Commonwealth: And the ſaid Proprietors may alſo chooſe and appoint any other officer or officers of the corporation, that they may deem neceſſary; and all repreſentations at the ſaid meeting, ſhall be proved in writing, ſigned by the perſon making the ſame, by ſpecial appointment, which ſhall be filed with, or recorded by the Clerk; and this act, and all rules, regulations and votes of the ſaid corporation, ſhall be fairly and truly recorded by the ſaid Clerk, in a book or books for that purpoſe provided and kept.

Proprietors may make and eſtabliſh rules and regulations.

Proviſo.

III. *And be it further enacted by the authority aforeſaid*, That for the purpoſe of reimburſing the ſaid Proprietors the monies by them expended, or to be expended in building and ſupporting the ſaid Bridge, a toll be, and is hereby granted and eſtabliſhed for the ſole benefit of the ſaid Proprietors, according to the rates following, *to wit*.——For each foot paſſenger, *one fiftieth part of a dollar*;—For each perſon and horſe, *one twentieth part of a dollar*;—For each horſe and chaiſe, for each ſulkey, or for each ſley drawn by one or more horſes, *one eighth of a dollar*;—For each coach, chariot, waggon or curricle, *one fourth of a dollar*;—For each cart, waggon, ſled or ſley, or other carriage of burden, drawn by one or more beaſts, *one tenth of a dollar*;—For each wheelbarrow, handcart, or other vehicle, capable of carrying a like weight, with one perſon, *three hundredths of a dollar*;—For neat cattle, and horſes, excluſive of thoſe rode, or in carriages, *three hundredths of a dollar* each;—For ſheep and ſwine, at the rate of *one twelfth of a dollar* for each dozen. And toll on Lord's days, ſhall be double the above rates; and to each team one perſon and no more, ſhall be allowed as a driver, to paſs free of toll. And at all times when the toll-gatherer ſhall not attend his duty, the gate or gates ſhall be left open. And the ſaid toll ſhall commence on the day of the opening of the ſaid Bridge, for paſſengers, and ſhall continue for, and during the term of ſeventy years, at the end of which time the ſaid Bridge ſhall be delivered up in good repair, to and for the uſe of this government.

Toll granted.

Rates of toll.

When to commence, and how long to continue.

IV. *And be it further enacted by the authority aforeſaid*, That the ſaid Bridge ſhall be well built, at leaſt thirty-two feet wide, of

Bridge,—how to be built.

good and ſuitable materials, and be well covered with plank or timber, on the top, ſuitable for ſuch a Bridge, with ſufficient rails on each ſide, boarded eighteen inches from the bottom, for the ſafety of paſſengers; and the ſame ſhall be kept in good, ſafe and paſſable repair, for the term aforeſaid; and at the end of the ſaid term, the ſaid Bridge ſhall be left in like repair. And the ſaid Proprietors ſhall conſtantly keep the ſaid Bridge accommodated with at leaſt twelve good lamps, four of which ſhall be at the draw, and kept burning through the night; and all the ſaid lamps ſhall be well ſupplied with oil, and lighted in due ſeaſon, and thoſe not at the draw, kept burning till twelve of the clock at night. And alſo at the ſeveral places where the toll ſhall be received, they ſhall erect and conſtantly expoſe to open view, a ſign or board with the rates of toll of all the tollable articles, fairly and legibly written thereon, in large or capital letters

—— to be accommodated with 12 lamps, &c.

And whereas it is always deſerving of the attention of government in accommodating the publick, and in promoting undertakings of publick utility, to guard as much as poſſible againſt inconveniences to any individuals; therefore for rendering the ſaid Bridge, as little inconvenient as poſſible to the navigation of the ſaid River, and for facilitating the paſſing and repaſſing of veſſels through the ſaid Bridge:

A convenient draw, or paſſage way, to be built.

V. *Be it further enacted by the authority aforeſaid*, That the ſaid Proprietors ſhall build, and during the ſaid term keep a convenient and ſufficient draw, or paſſage way, at leaſt thirty feet wide, at ſome place in the ſaid Bridge, proper for the paſſing and repaſſing of veſſels by day and by night, through the ſaid Bridge; and ſhall alſo build and maintain in good repair, a well conſtructed and ſubſtantial pier, or wharf, on each ſide of the ſaid Bridge, and adjoining to the draw every way, ſufficient for veſſels to lie at, ſecurely; and the ſaid draw ſhall be lifted for all ſhips and veſſels, without toll or pay, except for boats paſſing for pleaſure; and all ſhips and veſſels intending to paſs the ſaid draw, ſhall lie free of charge, at the wharf or pier, until a ſuitable time ſhall offer for paſſing the ſame; and the ſaid Proprietors ſhall, during the ſaid term, conſtantly keep at the ſaid draw, ſome ſuitable perſon or perſons for lifting up the ſame, for the paſſing or repaſſing of all ſhips and veſſels, with maſts that ſhall not admit of a ſafe paſſage under the draw; and alſo an anchor placed in the bed of the river, at a proper diſtance above the draw, with a hawſer of ſuitable ſize and ſtrength, extending through the draw to another anchor placed at a ſimilar diſtance below the ſaid draw, which hawſer ſhall always have the right or middle part lodged at the draw ready for uſe, to all veſſels paſſing the draw either way; and they ſhall alſo conſtantly keep at the ſaid draw, a good hawſer or rope, not leſs than three inches in circumference, of ſufficient length to extend from the extremity of the wharf or pier on one ſide of the Bridge, to the extremity of the wharf or pier on the other.

Draw ſhall be lifted without toll or pay, &c.

VI. *And be it further enacted by the authority aforeſaid*, That after the ſaid toll ſhall commence, the ſaid Proprietors or Corporation,

tion, ſhall annually pay to the Treaſurer of the town of *Salem*, or his ſucceſſor in the ſaid office, the ſum of *forty pounds* lawful money, as a full compenſation for the ferry-ways, lately erected by the ſaid town, the materials compoſing the ſame, and the emoluments ariſing from the ſaid ferry; and to the Treaſurer of the town of *Danvers*, in the ſaid county, or his ſucceſſor, the ſum of *ten pounds*, lawful money, annually. Compenſation to be made to the towns of *Salem* and *Danvers*.

VII. *And be it further enacted*, That if the ſaid Proprietors ſhall refuſe or neglect, for the ſpace of four years after the paſſing of this act, to build and compleat the ſaid Bridge, then this act to be void, and of no effect.

[This act paſſed *November* 17, 1787.]

An Act granting leave to *Samuel Barnard*, jun. *Jonathan Hoit* and *John Williams*, to erect a Bridge over *Deerfield-River*, between *Deerfield* and *Greenfield*, in the County of *Hampſhire*.

WHEREAS application hath been made to this Court, for permiſſion to build a Bridge over Deerfield-River, *between* Deerfield *and* Greenfield, *at a place called Rocky-Mountain; and it appearing that a Bridge in ſaid place would be of great publick utility*: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That for the purpoſes of reimburſing to *Samuel Barnard*, jun. *Jonathan Hoit*, and *John Williams*, their heirs, aſſociates and aſſigns, the monies expended or to be expended, in building and ſupporting the ſaid Bridge, a toll be, and hereby is granted and eſtabliſhed, for the ſole benefit of the ſaid *Samuel Barnard*, jun. *Jonathan Hoit* and *John Williams*, their heirs, aſſociates and aſſigns, according to the rates following, *viz.* Toll eſtabliſhed

For each foot paſſenger, or one perſon paſſing, *one penny one third of a penny*: One perſon and horſe, *two pence two thirds of a penny*: Single horſe cart, ſled or ſleigh, *four pence two thirds of a penny*: Sleigh drawn by two or more horſes, *ſix pence*: Single horſe-chaiſe, chair or ſulkey, *ſix pence*: Coaches, chariots, phaetons and curricles, *one ſhilling and four pence*: All other wheel carriages, drawn by more than one beaſt, *one ſhilling*: Neat cattle and horſes paſſing the ſaid Bridge, excluſive of thoſe ridden, or in carriages or teams, each, *one penny*: Swine and ſheep, for each dozen, and at the ſame rate for a greater or leſs number, *four pence*. Rates of toll.

And in all caſes, the ſame toll ſhall be paid for all carriages and vehicles, paſſing the ſaid Bridge, whether the ſame be loaded or not loaded; and to each team one man and no more, ſhall be allowed as a driver, to paſs free from payment of toll, and the toll-gatherer ſhall not be obliged at any time to open the gate or gates for

any

any paſſenger or paſſengers, until he is paid the rate or toll of ſuch paſſenger or paſſengers: And at all times, when the toll-gatherer ſhall not attend his duty, and from ſun-riſing to ſun-ſetting, on the Lord's day, the gate or gates ſhall be left open, and the ſaid toll ſhall commence on the firſt day of the firſt opening of the ſaid Bridge for paſſengers, and ſhall continue for, and during the term of fifty years from the ſaid day; and for the ſpace of ſeventy years, next after the expiration of the ſaid fifty years, ſuch toll ſhall be paid for the benefit of the perſons, and for the purpoſe beforementioned, as ſhall from time to time be approved of, and determined on, by the Court of General Seſſions of the Peace, for the county wherein ſuch Bridge ſhall be.

Gates to be left open on the Lord's days, &c.

Toll, when to commence, and how long to continue.

Provided nevertheleſs, That if at any time during the continuance of the ſaid term of fifty years, the county road, now leading from the ſaid town of *Deerfield* to *Greenfield*, acroſs the ſaid river, ſhall be diſcontinued, or ſhall not be kept and maintained in repair, no greater toll ſhall thereafter be paid for paſſing the ſaid Bridge, than ſhall from time to time, be ordered and allowed by the Court of General Seſſions of the Peace for the ſaid county, any thing in this act to the contrary notwithſtanding.

Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That the ſaid Bridge ſhall be well built, at leaſt ſixteen feet wide, of ſound and ſuitable materials, with a well conſtructed, ſubſtantial pier in the middle, to be built with ſtone, to be ſixty-five feet, at leaſt, in length, and thirty feet in width, and forty feet in height, and well planked on the top, with ſtuff proper for ſuch a Bridge, and the abutments on each ſhore, built of a ſuitable height, and with ſtone: And the Proprietors ſhall keep the ſaid Bridge in good, ſafe, and paſſable repair, for the term of one hundred and twenty years, and at the end of ſaid term of one hundred and twenty years, the ſaid Bridge ſhall be left in like repair, and ſhall revert to, and be the property of the Commonwealth; and if the Proprietors ſhall unreaſonably refuſe, or neglect to keep ſaid Bridge in ſuch ſafe, and paſſable repair, as aforeſaid, on ſuch refuſal or neglect being made to appear to the ſatisfaction of the Juſtices of the Court of General Seſſions of the Peace, in the county where ſaid Bridge ſhall be, it ſhall be in the power of the Juſtices aforeſaid, to prohibit, and forbid the Proprietors aforeſaid, from receiving any toll from any perſon or perſons, for the uſe of ſaid Bridge, until it is again put into ſuch paſſable repair, as by the ſame Juſtices ſhall be deemed ſufficient; and if the Proprietors of ſaid Bridge, or any of them, or any other perſon, ſhall, during the time of ſuch prohibition as aforeſaid, be convicted before any Juſtice of the Peace, for the ſame county, of receiving of any perſon or perſons, any toll or reward for the uſe of the ſaid Bridge, the perſon or perſons ſo convicted, ſhall forfeit and pay for each offence, the ſum of *ſix ſhillings*, one moiety thereof to accrue to the perſon or perſons complaining, the other moiety to the uſe of the poor of the town of *Deerfield*.

Bridge, how conſtructed, &c.

Proprietors to keep in good repair.

In caſe of refuſal or neglect, no toll ſhall be received.

III. *And be it further enacted*, That if the ſaid Proprietors ſhall refuſe or neglect for the ſpace of four years, after the paſſing of this act, to build and compleat the ſaid Bridge, then this act to be void and of no effect.

Four years allowed to compleat the bridge.

[This act paſſed *July* 7, 1786.]



Perpetual Laws,

Of the Commonwealth of Maſſachuſetts.

The following Laws having paſſed the General Court after the Arrangements were made for this Volume, are printed according to their Dates.

An Act for erecting Work-Houſes, for the Reception and Employment of the Idle and Indigent.

WHEREAS erecting houſes for the employment of idle perſons, who neglect and refuſe to exerciſe any lawful calling or buſineſs to ſupport themſelves and families, and for the poor and indigent, that want means to employ themſelves, may be uſeful to the publick, and eſpecially to ſuch towns, as ſhall be concerned in ſuch an undertaking: Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That when any town in this Commonwealth, ſhall ſee meet to erect or provide a houſe, for the purpoſe before-named, ſuch town ſhall be, and hereby is fully authorized and empowered thus to do; and the towns aforeſaid, as well as thoſe who have already erected ſuch houſes, are hereby empowered at their annual meeting for the choice of town officers, to chooſe three, five, ſeven, or more overſeers of the ſaid houſe, who ſhall have the inſpection and government thereof, with full power of appointing a maſter, and needful aſſiſtants, for the more immediate care and overſight of the

Any one town may erect or provide a work-houſe.

Empowered to chooſe overſeers.

perſons received into, or employed in the ſaid houſe: Which overſeers once in every month, and at other times as occaſion ſhall require, ſhall aſſemble together for the purpoſe of determining the moſt eligible method of diſcharging the duties of their office, and at their ſtated monthly meetings, ſhall have power to make needful orders and regulations for ſuch houſe; which orders ſhall be binding until the next public meeting of the inhabitants of ſuch town, to whom ſuch orders ſhall be preſented for approbation; and when by them approved, ſhall be obligatory, until revoked by the town.

Overſeers to make needful orders and regulations.

II. *And be it further enacted by the authority aforeſaid*, That when any number of towns ſhall agree (at their joint charge, and for their common benefit) to erect or provide a work-houſe for the employment of perſons reſiding in ſuch towns, that are indigent or idle, or to purchaſe land whereon to erect ſuch houſe, or for the accommodation thereof, they ſhall be, and hereby are veſted with power and authority thus to do; and the ordering and governing the ſame, making the neceſſary repairs thereof, appointing a maſter and other aſſiſtants, and the power of removing him or them from their reſpective offices or truſts, for irregular behaviour, incapacity, or for other ſufficient cauſe, ſhall be veſted in overſeers, to be from year to year ſpecially choſen by the ſeveral towns, at their annual meeting for the choice of town officers, each town to chooſe three, unleſs all the towns engaged in the undertaking, ſhall agree upon a different number: And in caſe of the death of an overſeer, or his removal from the town for which he was appointed, the vacancy made thereby, may be ſupplied by ſuch town, at any other public meeting: And if any town concerned, ſhall neglect to chooſe ſuch overſeers, in ſuch caſe the perſon or perſons choſen in the other towns, may proceed in all affairs of the ſaid houſe, any ſuch neglect notwithſtanding.

Any number of towns that ſhall agree to erect or provide a work-houſe, are veſted with power thus to do.

Overſeers to be annually appointed.

III. *And be it further enacted by the authority aforeſaid*, That there ſhall be ſtated quarterly meetings of all the overſeers, on the firſt Tueſday of the months of *January*, *April*, *July* and *October*, annually, to be held at the work-houſe, in order to inſpect the management, and for directing the buſineſs thereof; and beſides thoſe ſtated meetings, intermediate ones, to be held at the work-houſe, may be called by the overſeers of any town concerned; due notice of the time and occaſion thereof being given to the reſt, in ſuch way and manner, as ſhall be agreed upon by the overſeers, at any general ſtated meeting: And the ſaid overſeers when duly aſſembled, may chooſe a moderator, and at their firſt general meeting annually, after their appointment, they ſhall likewiſe chooſe a clerk, to enter and record all votes and orders, that ſhall be made and paſſed by the overſeers, who ſhall be ſworn to the faithful diſcharge of his truſt.

Times & places for holding ſtated quarterly meetings of the overſeers.

Overſeers empowered, when aſſembled, to chooſe a moderator, &c.

IV. *And be it further enacted by the authority aforeſaid*, That the overſeers for the time being, at a general quarterly meeting, provided one half at the leaſt of the whole number choſen are preſent, ſhall have full power and authority to make all reaſonable orders

Empowered to make all reaſonable orders and by-laws.

orders and by-laws, not repugnant to the laws of this Commonwealth, for the ordering and regulating the ſaid houſe, and the affairs thereof; which orders and by-laws ſhall continue and be in force until altered, annulled or reverſed by them or their ſucceſſors in office, and may likewiſe agree with the maſter or other aſſiſtants, and order meet allowance for their care and ſervice; and all other matters of leſs importance, relating to the ſaid houſe, may be tranſacted at any other meeting duly notified, when only one third part of the overſeers are preſent, ſubject nevertheleſs to be altered or reverſed, at any general ſtated meeting.

To make allowance to the maſter or aſſiſtants, &c.

V. *And be it further enacted by the authority aforeſaid*, That the yearly ſtipend or allowance to the maſter and aſſiſtants, over and above what is provided for by this act, for their care and trouble, together with the charge of keeping the houſe in repair, ſhall be paid by the ſeveral towns concerned, in proportion as they are taxed to the government, at the time the expence is incurred, or in ſuch other proportion, as all the towns concerned ſhall agree upon: And if any town or towns, ſhall refuſe or neglect to advance, or reimburſe their reſpective proportions of ſuch allowance, or other charges before-mentioned, after they ſhall have been ſtated and adjuſted by the overſeers, the ſame may be recovered of ſuch delinquent town or towns, in any Court proper to try the ſame, by action to be brought by ſuch perſon or perſons, as the overſeers ſhall in writing appoint for that purpoſe.

Yearly ſtipend to the maſter and aſſiſtants, how paid.

VI. *And be it further enacted by the authority aforeſaid*, That any two or more of the overſeers, in any town already provided with ſuch houſe, and any two or more of the overſeers, in any town that, either by themſelves, or in conjunction with other towns, ſhall hereafter erect a work-houſe, be, and they are hereby authorized, empowered and directed, to commit to ſuch houſe, by writing under the hands of the ſaid overſeers, to be employed and governed according to the rules and orders of the houſe, any perſon or perſons, reſiding in ſuch town, that are in this act declared liable to be ſent thither: Provided that no greater number of perſons belonging to any town, be received into the houſe, than ſuch town's proportion of the ſaid houſe to be alloted them, can accommodate, when the receiving them will exclude or incommode ſuch as belong to other towns; and an order of commitment from two or more overſeers, directed to a conſtable of the ſame town, ſhall by ſuch conſtable be obeyed and executed.

Overſeers empowered to commit to the work-houſe, ſuch perſons as are by this act declared liable.

Proviſo.

VII. *And be it further enacted by the authority aforeſaid*, That the perſons who ſhall be liable to be ſent unto, employed and governed in any work-houſe erected or to be erected, by one or more towns, in purſuance of this act, are,—all poor and indigent perſons that are maintained by, or receive alms from the town; alſo all perſons able of body to work, and not having eſtate or means otherwiſe to maintain themſelves, who refuſe or neglect ſo to do, live a diſſolute, vagrant life, and exerciſe no ordinary calling or lawful buſineſs, ſufficient

Deſcription of perſons liable to be ſent or employed in any work-houſe.

ſufficient to gain an honeſt livelihood, and all ſuch as having ſome rateable eſtate, but not ſufficient to qualify them to vote in town affairs, do neglect the due care and improvement thereof, and ſuch as ſpend their time and property in publick houſes, to the neglect of their proper buſineſs; or by otherwiſe miſpending what they earn, to the impoveriſhment of themſelves and their families, are likely to become chargeable to the town, or to the Commonwealth.

Towns that neglect to provide materials, &c. ſhall be deprived of their privilege.

VIII. *And be it further enacted by the authority aforeſaid,* That if any town ſhall refuſe or neglect to provide its proportion of the needful furniture for ſuch houſe, or the materials, implements or other neceſſary apparatus for carrying on the work there to be performed, according to their agreement, or as ſhall be directed by the overſeers, ſuch town ſhall be deprived of the privilege of ſending any perſon thither, until they ſhall comply with ſuch agreement or direction.

Towns to provide ſuch other materials, &c. as the overſeers ſhall determine.

IX. *And be it further enacted by the authority aforeſaid,* That beſides the aforeſaid proportion of materials and other things to be found by the towns concerned, each town may likewiſe provide ſuch other materials and tools for work, as the overſeers for ſuch town ſhall determine, any perſon by them committed to the ſaid houſe, can be employed about, more advantageouſly: And the maſter of the houſe ſhall receive ſuch materials and tools, and keep them ſeperate and apart from thoſe ſent from any other town, and ſhall be accountable to the overſeers of each town concerned, as well for the prime coſt, as for all profits and earnings, that ſhall be made by the labour of thoſe, belonging to ſuch town, under his care, and ſhall keep a regiſter of the names of the perſons committed to ſuch work-houſe, and of the towns to which they reſpectively belong, with the time of their being received into, and diſcharged therefrom, and of their earnings, that the ſame may appear to any of the overſeers, whenever they ſhall incline to inſpect them: And all controverſies between the maſter or keeper of ſuch houſe, and the overſeers of any town touching his accounts or other his affairs whatever, reſpecting the work-houſe, may be determined by the overſeers of the houſe, at a general or quarterly meeting.

Maſter of ſuch houſe ſhall receive ſuch materials, and be accountable.

Controverſies between the maſter of ſuch houſe, and the overſeers, how determined.

No town ſhall be chargeable for the ſupport of any perſon, not ſent by the overſeers.

X. *And be it further enacted by the authority aforeſaid,* That no town ſhall be chargeable for the relief or ſupport of any perſon committed to the ſaid houſe, who was not ſent thither by the overſeers belonging to ſuch town, nor ſhall any perſon orderly committed to the ſaid houſe, be diſcharged therefrom, but by the overſeers that made the commitment, or by the overſeers at a general or quarterly meeting, or otherwiſe by the Court of Common Pleas in the ſame county, upon application to them made for that purpoſe: And every perſon thus committed, if fit and able to work, ſhall be kept diligently employed in labour, during his or her continuance there: And in caſe the perſon ſo committed, ſhall be idle,

Perſons committed, to be kept diligently employed.

and

and not perform ſuch reaſonable taſk or ſtint, as ſhall be aſſigned; or ſhall be ſtubborn and diſorderly, they ſhall be puniſhed according to the orders that ſhall be made for ruling, governing and puniſhing the perſons there committed, not repugnant to the laws of the government.

Puniſhment for being diſorderly.

And whereas it ſometimes happens, that ſuch idle or indigent perſons are foreigners, and have not gained a legal inhabitancy in any particular town, but are the proper charge of the Commonwealth:

XI. *Be it further enacted by the authority aforeſaid,* That when any foreigner or other perſon, not a legal inhabitant of any town within this Commonwealth, ſhall become idle or indigent, it ſhall be the duty of the overſeers of the town in which ſuch perſon reſides, or any two of them, to commit ſuch idle or indigent perſon to the work-houſe belonging to the ſame town, or in which ſuch town is intereſted, and the perſon or perſons ſo committed, ſhall be under the care of the keeper of ſuch houſe, and be employed, if capable of labour, in the ſame way and manner, as is herein before directed, and ſhall be ſubject to the ſame rules and regulations as others committed to ſaid houſe; and ſuch overſeers ſhall keep a fair account of the charge of ſupporting ſuch idle or indigent perſon from time to time, and ſhall exhibit the ſame, once in every year at the leaſt, to the General Court, for allowance and payment, deducting therefrom, the amount of ſuch perſon's earnings.

Clauſe reſpecting idle or indigent perſons, who are foreigners, and not legal inhabitants of any town.

XII. *And be it further enacted by the authority aforeſaid,* That one third part of the profits or earnings of the work, done by the perſons detained in ſuch houſe, ſhall be to the maſter, for, and towards his ſupport, over and above ſuch further annual ſtipend as the overſeers may allow him: And the prime ſtock, together with the other two thirds of the profits, ſhall be diſpoſed of by the overſeers of the reſpective towns, to whom it belongs, either to the maſter towards his ſervices, or for the ſupport of the families of the perſons there detained, if any ſuch they have, or otherwiſe for the uſe of ſuch town, as occaſion ſhall require.

Profits or earnings of the work, how applied, &c.

XIII. *And be it further enacted by the authority aforeſaid,* That any work-houſe erected or provided as aforeſaid, may be diſcontinued or applied to any other uſe, whenever the town or towns concerned, ſhall find their circumſtances require it, and ſhall agree thus to do.

Any work-houſe may be diſcontinued.

Provided nevertheleſs, That nothing herein contained, ſhall be underſtood to abridge the town of *Boſton*, or the overſeers of the poor thereof, of any privilege or power reſpecting a work-houſe, granted unto them, by a law paſſed in the year one thouſand ſeven hundred and thirty-five; but the ſame law entitled, "An Act for employing and providing for the poor of the town of *Boſton*," and every clauſe thereof, is hereby eſtabliſhed, ratified and confirmed:

Proviſo, reſpecting the town of *Boſton*.

Proviſo, reſpecting the town of *Salem*.

Provided alſo, That nothing herein contained ſhall be ſo conſtrued, as to abridge the town of *Salem*, or the overſeers of the poor thereof, of any privilege or power granted unto them, by an act paſſed the twenty-ſixth day of *January*, one thouſand ſeven hundred and ſeventy-three, entitled, "An Act for employing and providing for the poor of the town of *Salem*, and for the better regulating the work-houſe in ſaid town;" but the ſame and all other acts relative to work-houſes heretofore erected in any particular town, and every clauſe of ſuch acts, are hereby eſtabliſhed, ratified and confirmed.

[This act paſſed *January* 10, 1789.]

An Act in Addition to an Act entitled, "An Act, repealing an Act paſſed in the Year of our Lord, one Thouſand ſeven Hundred and Eighty-Three, entitled, "An Act for raiſing by Lottery, the Sum of *three Thouſand Pounds*, for the Purpoſe of Building a Glaſs-Houſe, and promoting the Manufacture of Crown and other Glaſs in *Boſton*," and for the Purpoſe of promoting the Manufacture of Crown and other Glaſs within this Commonwealth.

Preamble.

WHEREAS in and by the ſaid act, paſſed the ſixth day of July, *in the year of our Lord, one thouſand ſeven hundred and eighty-ſeven, it was, among other things,* Provided, *That the Proprietors of the ſaid manufacture, ſhould erect and eſtabliſh their works and manufactory, and commence the manufacture of Glaſs as therein mentioned, at ſome place or places within this State, within the term of two years from the date of the ſaid act,—and that nothing in the ſaid act ſhould extend to give the ſaid Proprietors any excluſive right to the manufactory of Glaſs within this Commonwealth, as therein aforementioned, from and after three years from the paſſing of the ſaid act, any longer than the ſaid Proprietors, their Executors, Adminiſtrators and Aſſigns ſhould, annually, after the expiration of the ſaid three years, within this Commonwealth, manufacture for ſale, Glaſs-Ware, to the annual amount of* five hundred pounds, *at the leaſt: And whereas the ſaid Proprietors have requeſted, that the times by the ſaid act limited for the commencing of the ſaid manufacture, and for carrying it on to the annual amount aforeſaid, might be extended; and it appearing reaſonable and neceſſary to the encouragement of the ſaid manufacture, that the ſame ſhould be extended:*

Time extended, for the commencement of the manufacture.

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the time in and by the ſaid act limited for the commencement of the ſaid manufacture as afore recited, be and hereby is extended to the

term

term of four years from the paſſing of the act to which this is in addition; and that the term of three years preſcribed in and by the ſaid act for the ſaid proprietors to manufacture Glaſs-Ware within this Commonwealth, to the annual amount of *five hundred pounds* at the leaſt, as afore recited, be, and hereby is extended to the term of five years from the paſſing of the ſaid act, any law to the contrary notwithſtanding. Time extended reſpecting the amount.

[This act paſſed *January* 20, 1789.]

An Act for incorporating certain Perſons therein named, by the Name of the Truſtees of the Grammar School, in the Eaſterly Part of the Town of *Roxbury*, and for repealing all the Laws heretofore made for that Purpoſe.

WHEREAS the Education of Youth, has always been conſidered by the wiſe and virtuous, as an object of the higheſt importance to the ſafety and happineſs of a free people; and whereas Thomas Bell, *late of* London, *by his laſt will and teſtament, bearing date the twenty-ninth day of* January, *in the year of our Lord, one thouſand ſix hundred and ſeventy-one, gave certain lands and tenements therein mentioned, in the words following*, that is to ſay, "*I give unto Mr.* John Eliot, *miniſter of the Church of Chriſt in* Roxbury, *in* New-England, *and Captain* Iſaac Johnſon, *and to one ſuch other like godly perſon, now bearing office in the ſaid Church, and their ſucceſſors, the miniſter and other ſuch two head officers of the ſaid Church of* Roxbury, *as the whole Church there, from time to time, ſhall beſt approve of ſucceſſively from time to time, forever; all my meſſuages or tenements, lands and hereditaments, with their and every of their appurtenances, ſituate, lying and being at* Roxbury, *in* New-England *aforeſaid, in parts beyond the ſeas: to have and to hold to the ſaid miniſter and officers, of the ſaid Church of* Roxbury, *for the time being, and their ſucceſſors from time to time forever, in truſt only, notwithſtanding, to and for the maintainance of a School Maſter, and free ſchool, for the teaching and inſtructing of poor men's children at* Roxbury *aforeſaid, forever, and to be for no other uſe, intent, or purpoſe whatever." And whereas ſeveral other perſons, have heretofore bequeathed certain other lands and monies, to be applied to and for the purpoſes aforeſaid, to be under the direction of certain Feoffees, to be duly choſen for thoſe purpoſes; all which deviſes and donations have been ratified and confirmed by ſeveral acts of the Legiſlature of this (then Province) now Commonwealth of* Maſſachuſetts: *And whereas the ſaid acts are found to be inadequate to the regular carrying on of the affairs of the ſaid School, and a number of* Preamble.

the

the inhabitants of the ſaid town of Roxbury, *have petitioned this Court, that an act of incorporation may be paſſed, to incorporate a competent number of perſons, for the purpoſe of carrying into effect the benevolent deſigns of the ſaid* Thomas Bell, *and others:*

Former laws repealed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all the Laws, heretofore made, ratifying and confirming the doings relative to the Free School in the eaſterly part of the town of *Roxbury*, aforeſaid, ſo far as the ſame are inconſiſtent with this act, be, and they are hereby repealed, and rendered null and void.

Proviſo.

Provided always, That the perſons who act as Truſtees of the eſtate of the ſaid *Thomas Bell*, and the perſons who act as Feoffees of ſaid donations, ſhall have reſpectively, full right in law, to demand and receive all rents and incomes, or any arrearages thereof; or other ſums of money, which, from any perſons whatever, in conſequence of any leaſes, contracts or bargains made with ſaid Truſtees or Feoffees, are or may become due: And *Provided alſo*,

Further proviſo.

That the ſaid Truſtees and Feoffees reſpectively, ſhall be held to liquidate and ſettle all their accounts with, and to pay over all monies which they have received or ſhall in their ſaid capacities reſpectively receive, unto the Truſtees of ſaid School appointed by this act, or hereafter to be choſen in purſuance thereof.

Truſtees appointed and incorporated.

II. *Be it further enacted by the authority aforeſaid*, That the Hon. *John Lowell*, Eſquire, *Nehemiah Munroe*, *James Mears*, Reverend *Eliphalet Porter*, Clerk, Hon. *Increaſe Sumner*, Eſquire, *Samuel Sumner*, *Joſeph Ruggles*, Eſquire, *Thomas Williams*, Phyſician, and *Joſeph Williams*, gentleman, be, and they are hereby nominated and appointed TRUSTEES OF THE GRAMMAR-SCHOOL, in the eaſterly part of the town of *Roxbury*, and they are hereby incorporated into a body politick and corporate, by that name; and the ſaid Truſtees and their ſucceſſors to be choſen and appointed in the manner herein after preſcribed, ſhall be, and continue a body politick and corporate, by the ſame name forever.

Lands, &c. heretofore given, confirmed to the ſaid Truſtees.

III. *Be it further enacted by the authority aforeſaid*, That all the lands, buildings and other property whatſoever, which have heretofore been given by the ſaid *Thomas Bell* and others, to the ſaid Truſtees and Feoffees, for the purpoſe of ſupporting the ſaid Free-School, and all other eſtate, intereſt, claim or demand whatſoever, belonging to ſaid School, or which are held in truſt therefor, be, and they are hereby confirmed to the ſaid *John Lowell*, *Nehemiah Munroe*, *James Mears*, *Eliphalet Porter*, *Increaſe Sumner*, *Samuel Sumner*, *Joſeph Ruggles*, *Thomas Williams*, and *Joſeph Williams*, and to their ſucceſſors as Truſtees of the ſaid School, forever, for the uſes, intents and purpoſes, and upon the truſts, which in the ſaid laſt will and teſtament of the ſaid *Thomas Bell*, and in the donations aforeſaid, are intended; and the Truſtees aforeſaid, their ſucceſſors, and the officers that may be appointed in purſuance of this act,

act, are hereby required in conducting the concerns of the ſaid School, and in all matters relating thereto, to regulate themſelves conformably to the true deſign and intention of the ſaid *Thomas Bell* and others.

IV. *Be it enacted by the authority aforeſaid*, That the ſaid Truſtees and their ſucceſſors, ſhall have one common ſeal, which they may make uſe of in any cauſe or buſineſs that relates to the ſaid office of Truſtees of the ſaid School, and they ſhall have power and authority, from time to time, to change, alter or renew the ſame at pleaſure; and they may ſue and be ſued in all actions, real, perſonal or mixed, and proſecute and defend the ſame to final judgment and execution, by the name of the Truſtees of the Grammar-School in the eaſterly part of the town of *Roxbury*, as aforeſaid.

Truſtees to have one common ſeal, and may ſue and be ſued.

V. *Be it further enacted by the authority aforeſaid*, That the ſaid Truſtees and their ſucceſſors, ſhall be the true and ſole Viſitors, Truſtees and Governours of the ſaid School, in perpetual ſucceſſion forever, to be continued in the way and manner herein after pointed out, with full power and authority to elect by ballot, a Preſident, Secretary, Treaſurer, and ſuch other officers as they ſhall judge neceſſary and convenient, and to make and ordain ſuch by-laws, rules and orders, for the good order and government of the ſaid School, from time to time, as to them the ſaid Truſtees and their ſucceſſors ſhall, according to the various occaſions and circumſtances thereof, appear moſt fit and requiſite, either with, or without penalties, all which ſhall be obſerved by the officers, ſcholars and ſervants of the ſaid School:

Truſtees ſhall be the true and ſole viſitors and governours,—and may elect a Preſident and other officers, make by-laws, &c.

Provided always, That the ſaid by-laws, rules and orders are not repugnant to the Conſtitution and laws of this Commonwealth.

Proviſo.

VI. *Be it further enacted by the authority aforeſaid*, That the number of the ſaid Truſtees ſhall not at any one time conſiſt of more than thirteen nor leſs than nine, five of whom ſhall conſtitute a quorum for tranſacting buſineſs, and a major part of the members preſent at any ſtated meeting thereof, ſhall decide all queſtions that may properly come before them.

Number of truſtees limited.

And to perpetuate the ſucceſſion of the ſaid Truſtees,

VII. *Be it further enacted by the authority aforeſaid*, That as often as one or more of the ſaid Truſtees, ſhall die, reſign, remove, or in the judgment of the major part of ſaid Truſtees for the time being, be rendered by age, infirmity, or otherwiſe incapable of diſcharging the duties of his office, then and ſo often the remaining part of the Truſtees then ſurviving, or the major part of them, at ſome ſtated meeting, ſhall elect by ballot, one or more perſons, being reputable freeholders in the town of *Roxbury* aforeſaid, to ſupply ſuch vacancy or vacancies: *Provided always*, That the miniſter and the two oldeſt deacons of the firſt Church of Chriſt in the ſaid town of *Roxbury*, ſhall always, by virtue of their ſaid offices, be members of the ſaid corporation.

Mode of perpetuating the ſucceſſion.

Proviſo.

Truſtees rendered capable in law, to take and receive by gift, &c any land or other eſtate.

VIII. *Be it further enacted by the authority aforeſaid*, That the Truſtees aforeſaid, and their ſucceſſors, be, and they are hereby rendered capable in law to take and receive by gift, grant, deviſe, bequeſt, or otherwiſe, any lands, tenements or other eſtate real or perſonal, provided, that the annual income of ſuch real eſtate, ſhall not exceed the ſum of *one hundred and fifty pounds*, and the annual income of ſuch perſonal eſtate ſhall not exceed the ſum of *one hundred and fifty pounds*, (both ſums to be eſtimated in ſilver at the rate of *ſix ſhillings and eight pence* by the ounce) to have and to hold the ſame to the ſaid Truſtees, and to their ſucceſſors in that office, on ſuch terms and under ſuch proviſions and limitations as may be expreſſed in any deed or inſtrument of conveyance to them made;

Proviſo:

Provided always, that neither the ſaid Truſtees, nor their ſucceſſors, ſhall ever hereafter receive any grant or donation, the condition whereof ſhall require them or any others concerned, to act, in any reſpect, contrary to the deſign expreſſed in the laſt will and teſtament of the ſaid *Thomas Bell*, or any donation heretofore made. And all deeds and inſtruments which the ſaid Truſtees may lawfully make, in their ſaid capacity, as aforeſaid, ſhall, when made in their name, ſigned and delivered by their Treaſurer, and ſealed with their common ſeal, be binding on the ſaid Truſtees, and their ſucceſſors, and be valid in law.

Meetings ſhall be held annually, for the choice of officers.

IX. *Be it further enacted by the authority aforeſaid*, That there ſhall be held a meeting of the ſaid Truſtees as ſoon as conveniently may be after the paſſing of this act, and afterwards once in every year at leaſt, on ſome day to be ſtated by the ſaid Truſtees, annually, forever; at which meetings the major part of the ſaid Truſtees preſent, ſhall proceed to elect a Preſident, Secretary, Treaſurer and ſuch other officers as they ſhall deem meet, who ſhall continue in office for the term of one year, or until others ſhall be choſen in their room; and the ſaid officers ſhall be under oath, faithfully and impartially to diſcharge all the duties of their ſaid offices, during the time for which they ſhall be elected, and until others ſhall be choſen and ſworn in their ſtead. And there ſhall be three quarterly meetings of the ſaid Truſtees, beſides the ſaid annual meeting, to be held on ſuch days as ſhall be preſcribed by the regulations or orders of the ſaid Truſtees, at either of which meetings any buſineſs relative to the government and well ordering of the affairs of the ſaid School may be tranſacted, and vacancies filled up, if neceſſary: *Provided however*, That no vacancy in the office of Truſtee ſhall be filled up at any meeting of ſaid Truſtees, unleſs previous notice ſhall have been given by the Secretary to each of the Truſtees, that ſuch vacancy exiſts, and is intended to be filled up at ſuch meeting; which notice the ſaid Secretary is directed to give, at the application of either of the Truſtees.

Three quarterly meetings ſhall be held, beſides the annual meeting.

And that the ſtate of the finances of ſaid School may be known from time to time,

X. *Be it further enacted by the authority aforeſaid*, That it ſhall and may be lawful for the inhabitants of the ſaid town of *Roxbury*, at any legal meeting thereof, not exceeding once in any one year, to call on the ſaid Truſtees for a ſtate of their general accounts, at the then laſt audit thereof, and it ſhall be the duty of the Truſtees aforeſaid, or ſome one of their officers, for the time being, to exhibit an atteſted copy of ſuch ſtatement accordingly. Inhabitants may call on the truſtees, for a ſtate of their accounts.

XI. *Be it further enacted by the authority aforeſaid*, That *Thomas Clarke*, Eſquire, be, and he is hereby authorized and directed to determine the time and place for holding the firſt meeting of the ſaid Truſtees, and to certify them reſpectively thereof, ten days at the leaſt previous to the holding the ſame. *Thomas Clarke*, Eſq. to call the firſt meeting.

[This act paſſed *January* 21, 1789.]

An Act to ſet off to the Patentees, and other Purchaſers, certain lands on the Iſland of *Chapequiddick*, in the County of *Dukes-County*, and finally to adjuſt and determine all Diſputes between the ſaid Patentees and other Purchaſers, and the *Indians* on the ſaid Iſland, and to prevent Cattle, Horſes, Sheep, Goats and Swine from going at large on the ſaid Iſland, at certain Seaſons of the Year.

WHEREAS certain diſputes and differences have ariſen between the patentees and other purchaſers of lands on the Iſland of Chapequiddick, *in the county of* Dukes-County, *and the* Indians *inhabiting the ſaid Iſland; and whereas in conſequence of ſaid diſputes and differences an application was made to the General Court of this Commonwealth, and the ſaid General Court did on the twelfth day of* November, *in the year of our Lord one thouſand ſeven hundred and eighty-five, reſolve, that* Walter Spooner, Solomon Freeman, *and* Shearjaſhub Bourne, *Eſquires, be a committee to repair to the Iſland of* Chapequiddick, *(they previouſly giving twenty days notice to ſaid proprietors and the* Indians *on ſaid Iſland) to ſet off to the patentees and other purchaſers, ſuch quantity of lands by meets and bounds, as to ſaid committee, in equity, (all circumſtances conſidered,) may appear juſt and reaſonable, in full of their reſpective rights and purchaſes, and for aſcertaining what ſum or ſums of money the other inhabitants ought to pay the* Indians, *for the priviledge of mowing the ſalt meadow and grazing cattle thereon, and to take into conſideration and determine upon ſuch other matters as ſhall appear to them juſt and reaſonable: finally, to adjuſt all diſputes, and report their doings to the General Court for confirmation, as ſoon as may be: And alſo to report what meaſures are neceſſary to be taken to prevent any cattle, horſes, ſheep, goats,* Preamble.

goats, or ſwine from going at large on the ſaid Iſland, from the tenth day of April, *to the thirtieth day of* October, *annually; and alſo to prevent any wood being ſold or tranſported from off the Indian lands on ſaid Iſland, on any pretence whatſoever: And whereas the ſaid Committee have reported to this Court, after a due and full hearing of the parties, their proceedings and opinion reſpecting the matters and things committed to them, as aforeſaid, and as this Court are willing to confirm and ratify their doings, ſo as finally to determine and put an end to the ſaid diſputes:*

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That the line herein after deſcribed, be taken and held forever hereafter, as a diviſional line or boundary between the Patentees, or other purchaſers of lands on the ſaid Iſland of *Chapequiddick*, and the Indians inhabiting ſaid Iſland, *to wit.* beginning at a heap of ſtones on the bank of the harbour, which heap of ſtones, is by the eaſt ſide of the land, formerly owned by *Thomas Arey*; thence extending ſouth, ſixty-ſeven degrees eaſt in the ſaid *Arey's* line, until it comes to a heap of ſtones on the brow of a hill, and about thirty rods to the weſtward and northward of a well or ſpring of water, known by the name of *Joel's-well*; from thence extending north, ſeventy-five degrees, eaſt, to a heap of ſtones lying on the eaſterly ſide of land belonging to *Joſeph Huxford*, and about ſeven rods to the northward of a ſwamp near the ſaid *Huxford's* dwelling-houſe; thence running ſouth, ſeventy-ſix degrees eaſt, fifty-one rods, to a white oak tree, marked with ſtones about it, ſtanding about two rods northward of a hole of water; from thence running ſouth, ſeventy-nine degrees eaſt, twenty-ſeven rods, to a ſtake with ſtones about it, ſtanding on the brow of a hill, and about three rods to the northward of a hole of water; from thence running ſouth, ſixty-one degrees eaſt, twenty-eight rods to a walnut tree marked, ſtanding two rods to the eaſtward of the eaſterly corner of a ſwamp; thence running ſouth, fifty-one degrees eaſt, ſixty rods, to a heap of ſtones lying on the edge of a ditch, by the lands herein after ſet off to the Indians, and then to continue ſouth, fifty-ſix degrees eaſt, by the ſaid Indians land, to the eaſterly ſide thereof.

Diviſional line between the Patentees & Indians

II. *Provided always, and be it hereby enacted,* That the ſaid Indians or their deſcendants, ſhall never be held or obliged to make, maintain or repair any fence, fences or parts of fences on the line or lines ſo made and eſtabliſhed as aforeſaid, or on any other lines made and eſtabliſhed by this act, but that the ſaid Patentees and other purchaſers, ſhall be at the ſole and whole charge and expence of making, maintaining and repairing the ſaid diviſional fence and fences, any law to the contrary notwithſtanding.

Patentees and other purchaſers, to be at the ſole charge of making and repairing the diviſional fence,

III. *And be it enacted,* That a road or way, two rods wide, from the bounds firſt beforementioned, by the harbour, unto the eaſterly ſide of the ſaid Indians land, and adjoining on the northeaſterly ſide of the line aforeſaid, and alſo a road or way two rods wide, from the

Public roads to remain open,

the bounds firſt beforementioned, weſterly to the point of land or beach near the town, as now uſed and improved, ſhall be, and remain forever hereafter open and publick roads or highways, for all and every perſon and perſons to paſs and repaſs at their pleaſure.

IV. *And be it further enacted*, That the ſaid Indians and their deſcendants, forever hereafter, ſhall have and enjoy the full and free privilege and liberty to paſs and repaſs for the purpoſes of fiſhing, fowling and gathering beach and wapochqua graſs, to and from any and every part of the ſaid Iſland, without any let, hindrance or moleſtation whatſoever. Privilege of fiſhing fowling, &c. allowed the Indians.

V. *And be it further enacted by the authority aforeſaid*, That a certain tract of meadow, and upland, excepting twenty-two acres of land with the buildings thereon, in the ſaid tract, which *Abiſhai Merchant*, purchaſed of *Iſreal Cognehau*, deceaſed, late *Sachem* of the ſaid Indians, and excepting thirty-five acres of land adjoining to, and on the weſterly ſide of the land belonging unto the ſaid *Merchant*, which by a Reſolve of the General Court of this Commonwealth, dated *June* the eighth, in the year of our Lord, one thouſand ſeven hundred and eighty-ſix, is to be ſold for diſcharging of the ſeveral debts againſt the ſaid *Iſrael*, and excepting alſo a way by gates or bars on the cliſt to the way laid out by *Arey's* land, which tract is included in the following bounds, *to wit.* beginning at a heap of ſtones ſtanding on the bank where the road began as beforementioned, then running ſoutheaſterly as the road runs, until it comes to the heap of ſtones lying on the edge of a ditch beforementioned, then from the ſaid ſtones, by the edge of the ſaid ditch, ſouth, thirty-ſeven degrees weſt, ninety rods, to a heap of ſtones at the weſt corner of the land now ſet off to the Indians; then ſouth, ſixty-two degrees eaſt, eighty-ſix rods, to a ſmall, ſharp flinty rock, about twelve rods to the ſouthward of a round ſwamp, which is the ſouth bounds of the land ſet off to the ſaid Indians; then north from the ſaid rock, thirty-eight degrees eaſt, one hundred and twenty-two rods to a heap of ſtones on the ſide of a ſharp hill about twelve rods to the ſouthward of the dwelling-houſe of *George Johnſon*, tanner; thence running north, fifty degrees eaſt, forty rods, to a heap of ſtones lying about one rod to the eaſtward of a well hole, by the corner of the ſalt marſh; thence north, forty-five degrees, eaſt, thirty-one rods, to a heap of ſtones on the edge of the bank, by *Cape-poge pond*, ſo called; and ſo to continue to ſaid pond, at a place, fifty-two rods to the eaſtward of a point called *Quahog-point*, being all the meadow and other land lying to the northward and eaſtward of the ſaid lines, be, and hereby is ſet off and confirmed to the ſaid Indians. A certain tract of meadow and upland, ſet off and confirmed to the Indians. Boundaries.

VI. *And be it further enacted*, That a certain tract of wood land lying and being on the ſaid iſland, bounded as follows, *viz.* beginning at the weſterly ſide of *Benjamin Peaſe*, junior's land, and where it adjoins a way or path called *Pocha-Path*, then running weſterly Tract of wood-land ſet off.

by the ſaid path, until it comes to the land of *Benjamin Natick*, *Patience Dutch*, and others; then north thirty-four degrees weſt, one hundred and fourteen rods, by the ſaid *Natick* and others' land, to the north-eaſt corner of the ſaid *Benjamin Natick*'s land; then running north forty-four degrees weſt, ſixty rods, to a heap of ſtones; then north ſixty-nine degrees eaſt, about one hundred and ten rods to a heap of ſtones by the land of *David Norton*; then ſouth ſixty-eight degeees eaſt, by ſaid *Norton*'s land, about ſixty rods, to the land of the ſaid *Benjamin Peaſe*, junior; then ſouth thirty-ſix degrees weſt, by the ſaid *Peaſe*'s land, forty-ſix rods, to *Peaſe*'s corner; then ſouth forty-three degrees eaſt, fifty-ſix rods; then ſouth forty-nine degrees eaſt, by the land of the ſaid *Peaſe*, fifty-ſix rods, until it comes to *Pocha-Path* or way firſt mentioned, be, and hereby is ſet off and confirmed to the ſaid Indians. This and the tract of land deſcribed in the laſt before enacting clauſe, to have and to hold, to them the ſaid Indians, and their deſcendants forever, as tenants in common, but not ſubject as other lands held by tenants in common are, to any diviſion or diviſions to be had or made between them or any of them; any law to the contrary in any wiſe notwithſtanding.

Lands deſcribed, to be held as tenants in common.

VII. *And be it enacted*, That all the wood on the ſaid laſt mentioned tract of land, be, and ſhall remain to, and for the uſe of the ſaid Indians forever; and that no perſon or perſons whatever, ſhall at any time hereafter, ſell or tranſport any of the ſaid wood off the ſaid iſland on any pretence whatſoever; and any, and every perſon whatever, who ſhall at any time hereafter, ſell or tranſport any of the ſaid wood off the ſaid iſland, and every perſon other than the ſaid Indians, who ſhall uſe or conſume any of the ſaid wood, ſhall forfeit and pay tripple the value of ſuch wood ſo ſold, uſed, conſumed or tranſported off the ſaid Iſland, to any perſon who ſhall proſecute and ſue for the ſame.

Wood on the laſt mentioned tract, to remain to and for the uſe of the Indians, forever.

VIII. *And be it further enacted*, That there be, and hereby is laid out on the ſaid iſland, a way two rods wide, through gates or bars, beginning at an old path, about fifteen rods to the weſtward of the dwelling-houſe of *Simon Porredge*, by the ſoutherly line of the lands ſet off to the Indians, and then ſoutherly on a ſtrait line by the land of *Benjamin Peaſe*, jun. to a path or way called *Pocha-path*, and ſo to continue in the ſaid *Pocha-path*, to the woodland ſet off to the ſaid Indians, and then through the ſaid woodland, where there is now a way uſed, to the way laid out to the harbour or ſwimming place ſo called, to be kept forever free, for any and every perſon to paſs and re-paſs at their own pleaſure, through ſaid gates or bars.

A way, two rods wide, laid out.

IX. *And be it further enacted by the authority aforeſaid*, That all the lands and dwelling-houſes, on the weſterly ſide of the ſaid iſland, now in the occupation and improvement of any Indian or Indians, be and they hereby are ſet off, and confirmed to ſuch Indian or Indians, as now occupy and improve the ſame, reſpectively, to have

Lands & dwelling-houſes, ſet off and confirmed.

have and to hold to them during their natural life, and no longer; excepting a certain tract of land, now in the occupation and improvement of *Patience Dutch*, which ſame tract of land, is hereby ſet off, and confirmed to the ſaid *Patience Dutch*, to hold, to her and her heirs, forever.

Lands confirmed to the patentees and other purchaſers.

X. *And be it further enacted*, That all the reſt and reſidue of meadows and lands, on the ſaid iſland of *Chapequiddick*, not herein before ſet off and confirmed to the ſaid Indians, or ſet off, and appropriated for roads and ways, be, and they hereby are ſet off, and confirmed unto the ſaid patentees and other purchaſers, to have and to hold the ſame to them, their heirs and aſſigns, forever, in ſeveralty, according to the proportion and diviſion made, and ſubſcribed by the committee of the ſaid patentees and other purchaſers, choſen and appointed for that purpoſe, on the twenty-ſecond day of *April*, in the year of our Lord, one thouſand ſeven hundred and eight-ſix; which ſaid diviſion and proportion, is hereby ratified and confirmed.

And whereas within the boundaries of the lands ſet off to the ſaid Indians, there are ſeveral tracts of ſalt meadow, heretofore improved by ſome of the ſaid patentees, and other purchaſers, for which they have paid conſiderable ſums of money, and which will be a loſs to the particular proprietors if not provided againſt:

Loſſes and expences, to be eſtimated and averaged.

XI. *Be it therefore enacted by the authority aforeſaid*, That the true value of ſuch loſſes be eſtimated and averaged among all the ſaid patentees and other purchaſers, and that each bear a juſt and equal proportion of ſuch loſſes, as well as an equal and juſt proportion of all expences which have been incurred, in ſettling the ſaid diſputes, ſince the firſt day of *April*, in the year of our Lord, one thouſand ſeven hundred and eighty-ſix; the loſſes, coſt and expences to be aſcertained, eſtimated, and proportioned by the ſaid patentees and other purchaſers, at a meeting to be called for the purpoſe, as ſoon as may be, after the paſſing this act, and they are hereby authorized, to have and to hold a meeting accordingly.

And whereas ſeveral ſuits at law have been originated, and are now pending in the Court of Common Pleas, in the ſaid county of *Dukes-County*, between the ſaid patentees and other purchaſers, and the ſaid Indians, reſpecting the ſaid lands, and the ſaid committee have reported, that the ſaid ſuits ſhould ceaſe, and be forever barred:

Suits at law reſpecting ſaid lands, to be diſmiſſed.

XII. *Be it therefore further enacted*, That all ſuits, cauſes and actions, now pending in the ſaid Court of Common Pleas, reſpecting the lands on the ſaid iſland, be diſmiſſed, and the Juſtices of the ſaid Court, are hereby authorized and directed to diſmiſs the ſame accordingly.

No ſuits, &c ſhall be hereafter ſuſtained.

XIII. *And be it enacted*, That from and after the paſſing this act, no action or actions, ſuit or ſuits, at law, whatever, reſpecting the ſaid lands, ſhall be ſuſtained or maintained in the ſaid Court, other than ſuch as may ariſe upon claims, by and under the authority of this act.

XIV.

Governour empowered to appoint guardians.

XIV. *And be it further enacted by the authority aforesaid*, That his Excellency the Governour, by and with the advice and consent of the Council, be, and he hereby is empowered and requested, to appoint two white persons, and one Indian, as guardians, to have the care and oversight of the said Indians, and their interest on the said island.

Deeds, &c. made without the consent of guardians, deemed null and void.

XV. *And be it enacted*, That all deeds of bargain, sale, release, or quit-claim, or conveyances whatsoever, of any lands, tenements or hereditaments, as well for terms of years as forever, had, made, gotten, procured or obtained, excepting such as are allowed and confirmed by this act, or which may at any time hereafter be had, made, gotten, procured, and obtained from any Indian or Indians on the said island, by any person or persons whomsoever, without the licence, approbation and allowance of all the guardians, for the same, shall be deemed and adjudged in law, to be null, void and of none effect.

Bills, bonds, or other contracts, exceeding 20s. made without the consent of the guardians, deemed null and void.

XVI. *And be it further enacted*, That from and after the publication of this act, no bill, bond or other specialty, in writing, on any contract whatever, nor any book account, or any verbal contract, or promise for payment of monies, shall be deemed good or be recoverable, against any of the said Indians inhabiting the said island, provided the same shall exceed the sum of *twenty shillings*, unless such bill, bond or specialty be entered into, or such verbal contract or promise be made, in the presence and by and with the consent and approbation of all the said three guardians, to be appointed as aforesaid.

And whereas the turning out cattle, horses, sheep, goats and swine to be and go at large on the said island, greatly damages the same:

Clause respect- cattle, horses, &c going at large.

XVII. *Be it therefore enacted by the authority aforesaid*, That after the passing of this act, if any person or persons shall turn out any of his or their cattle, horses, sheep, goats or swine, or shall permit and suffer them to be and go at large on the said island, at any time between the twenty-fifth day of *April*, and the twenty-fifth day of *October* yearly, he or they shall forfeit and pay for each offence, the penalty of *five shillings* for every horse, and each head of neat cattle; and *one shilling* a head for each sheep, goat or swine, so going at large, which penalty shall be recovered by any person who shall sue for same, in any Court proper to try such cause.

[This act passed *January* 26, 1789.]

An

An Act for the better regulating of the Indian, Mulatto and Negro Proprietors and Inhabitants of the Plantation called *Marſhpee*, in the County of *Barnſtable*.

WHEREAS the proviſions already made by law reſpecting the Indian, Mulatto and Negro proprietors and inhabitants of the plantation called Marſhpee, *in the county of* Barnſtable, *are inſufficient to the well ordering and managing their affairs, and protecting them and their property, againſt the arts and deſigns of thoſe who may from time to time be diſpoſed to take the advantage of their weakneſs:* Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That a board of overſeers ſhall be eſtabliſhed, conſiſting of five diſcreet and diſintereſted perſons, (two of whom to be inhabitants of the county of *Barnſtable*, and the other three of the adjoining counties,) and ſhall be appointed as is herein after directed, which overſeers are hereby veſted with full power and authority to regulate the police of the ſaid plantation, to eſtabliſh rules and regulations for the well ordering and managing the affairs, intereſt and concerns of the ſaid Indian, and other proprietors and inhabitants, as well with reſpect to the improvement and leaſing out of their lands and tenements, regulating their ſtreams, ponds and fiſheries, perambulating their lines, and meeting out lots for their particular improvement, as with reſpect to their bargains, contracts, wages and other dealings, and to take due care of their poor, and that their children be bound out to ſuitable perſons, of ſober life and converſation. And the ſaid overſeers are impowered and directed to hold ſtated meetings, elect a moderator, ſecretary and treaſurer, and may if they judge it neceſſary, appoint ſome ſuitable perſon or perſons to act under their direction, as a guardian or guardians to the ſaid Indian and other proprietors, and to carry into execution, their ſaid regulations and orders, (which guardian or guardians ſhall give bonds to the ſaid board of overſeers, for the faithful diſcharge of their truſt, and to render in to the ſaid overſeers, and ſettle their accounts once every year and oftener if required) and whenever the ſaid board ſhall judge the continuance of the ſaid guardians in their ſaid truſt, inexpedient or unneceſſary, they may remove them.

A board of overſeers to be eſtabliſhed.

Their power & authority.

Stated meetings of the overſeers directed to be held.

II. *And be it enacted,* That the ſaid board of overſeers or the guardians whom they may appoint, are hereby veſted with power and authority to demand and receive any property, dues or wages, which now are or hereafter may be detained, withheld from, or juſtly owing, to ſaid proprietors or any of them, by any perſon or perſons, and to inſtitute and bring forward in their own names and capacities, any action or actions for the recovery thereof, as likewiſe for any illegal entries, or treſpaſſes, which have been, or may be made or committed on their lands, tenements, fiſheries and other property; or for any

Overſeers and guardians, veſted with power to demand and receive dues, &c.

fraud or injury done to them or any of them, and the ſame action or actions to purſue to final judgement and execution; and ſhall at all times have full power and authority to examine, adjuſt and ſettle all accounts and controverſies between them or any of them, and any white perſon or perſons, for voyages or other ſervices and tranſactions which remain unſettled, or which may hereafter be done or ariſe, as likewiſe to adjuſt and bring to a ſettlement all accounts and proceedings of any former guardian, truſtee or overſeer, taking effectual care, that juſtice be done therein; and may alſo bind by indenture, the children of the poor of the ſaid proprietors to ſuitable perſons, of ſober life and converſation, as they the ſaid overſeers or guardains may judge neceſſary and convenient.

Overſeers empowered to ſettle all controverſies, & accounts.

III. *And be it further enacted*, That no leaſe, indenture, covenant, bond, bargain or contract in writing, made by any of ſaid proprietors, ſhall be of any validity, unleſs it be made by, or under the direction of ſaid board, guardian or guardians, or with their conſent and approbation, nor ſhall any action be brought againſt any of the ſaid proprietors upon any account, for goods ſold and delivered, ſervices done and performed, or for money had and received, to the uſe of another, unleſs ſuch account ſhall have been firſt examined by the ſaid overſeers, guardian or guardians, and by them approved.

No leaſe, covenant or contract, ſhall be valid, unleſs made under the direction of the overſeers or guardians.

IV. *And be it further enacted*, That the ſaid overſeers, ſhall keep a fair and regular account of all their tranſactions, and of all the rents and profits ariſing from their the ſaid proprietors lands, tenements and fiſheries, or otherwiſe, and of all money, wages or incomes, which they may receive from time to time belonging to the ſaid proprietors or any of them, and ſhall diſtribute to them, their reſpective rights, dues and ſhares, after deducting the reaſonable expence of conducting their ſaid buſineſs, payment of their juſt debts, and (from the common profits,) providing for the ſick and indigent, and reſerving from time to time, ſuch ſum or ſums as can conveniently be ſpared, for the ſupport and continuance of religous inſtruction among them, and the ſchooling of their children; and they the ſaid overſeers ſhall ſtate their accounts annually, and lay the ſame before the Governour and Council for approbation and allowance: And the Governour with the advice of the Council, is hereby authorized and impowered, to appoint ſuch overſeers, and to fill up vacancies whenever by death, reſignation, removal out of the Commonwealth, or otherwiſe, they may happen; to diſplace them or any of them for want of ability or integrity, or other reaſonable cauſe, and to audit their accounts.

Overſeers to keep a fair and regular account of their tranſactions

To ſtate their accounts annually, and lay the ſame before the Governour & Council.

V. *And be it enacted*, That no liberty or pretended liberty, from the proprietors, or any of them, for cutting off any wood, timber or hay, milking pine-trees, carrying off any ore or grain, or for planting or improving any of ſaid lands or tenements, without the approbation of ſaid overſeers, guardian or guardians, ſhall be any bar

No wood, timber, or hay, ſhall be cut, under pretence of liberty from the proprietors.

bar in any of their action or actions. Provided nothing herein ſhall be conſtrued to defeat any leaſe or indenture heretofore made agreeably to law. And the lands and tenements of ſaid proprietors, ſhall not be liable to be taken in execution for debt. And if any of ſaid proprietors ſhall be committed in execution for debt, he, ſhe or they ſhall have the ſame benefit, from an act intitled, "an act for the relief of poor priſoners who are committed by execution for debt," as any white perſon now hath, who has no eſtate, their being proprietors notwithſtanding, and the oath ſhall be varied accordingly.

Proprietors to have the benefit of an act, for the relief of priſoners committed for debt.

VI. *And be it further enacted*, That all laws heretofore made reſpecting the ſaid *Marſhpee* Indians, be, and hereby are repealed.

Former laws repealed.

[This act paſſed *January* 30, 1789.]

An Act for incorporating certain Perſons by the Name of the Proprietors of the *Beverly* Cotton-Manufactory.

WHEREAS the promotion of uſeful manufactures, and particularly ſuch as are carried on with materials of American produce within this Commonwealth, will tend to the happineſs and welfare thereof, by increaſing the agriculture and extending the commerce of the country; and whereas John Cabot, George Cabot, Deborah Cabot, Andrew Cabot, Moſes Brown, Joſhua Fiſher, Iſrael Thorndike, James Leonard, Thomas Somers *and* Iſaac Chapman, *all of* Beverly, *and* Henry Higginſon, *of* Boſton, *have aſſociated themſelves, for the purpoſe of eſtabliſhing the manufacture of cotton, and cotton and linnen goods, and have been at conſiderable expence in promoting the ſaid manufacture; and whereas they have petitioned the Legiſlature to incorporate them, with ſuch powers and priviledges as may enable them to proſecute the buſineſs aforeſaid:*

Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That the aforenamed *John Cabot, George Cabot, Deborah Cabot, Andrew Cabot, Moſes Brown, Joſhua Fiſher, Iſrael Thorndike, James Leonard, Thomas Somers* and *Iſaac Chapman*, all of *Beverly*, and *Henry Higginſon*, of *Boſton*, ſo long as they ſhall be proprietors in the ſaid manufactory, together with all thoſe who now are or ſhall become proprietors in the ſame, are hereby incorporated forever by the name of THE PROPRIETORS OF THE BEVERLY COTTON MANUFACTORY.

Proprietors incorporated.

Provided nevertheleſs, That any perſon who now is, or hereafter ſhall be by force of this act, one of the ſaid corporation, upon his ceaſing to be a proprietor as aforeſaid, ſhall ceaſe to be a member thereof.

Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That the ſaid Corporation are hereby made capable in law, of holding, purchaſing,

purchaſing, poſſeſſing and enjoying to the uſe of the ſeveral members of the ſaid Corporation, and to their heirs and aſſigns, in the ſame proportion asthey are ſeverally intereſted in the ſaid manufactory, real eſtate to the amount of *ten thouſand pounds*, and perſonal eſtate to the amount of *eighty thouſand pounds*, and alſo of ſelling, aliening or diſpoſing of the ſame: *Provided however*, That the ſame be employed while the property of the ſaid Corporation, in the manufacture of the articles aforeſaid.

Proprietors made capable in law of holding and poſſeſſing real and perſonal eſtate.

Proviſo.

III. *And be it further enacted by the authority aforeſaid*, That the ſaid Corporation ſhall be capable in law, of ſuing and being ſued, pleading and being impleaded, defending and being defended, in all Courts of record and other places whatſoever, and ſhall have ſuch officers and ſervants as they may hereafter appoint, and are hereby empowered to make and execute ſuch laws and regulations, as may be neceſſary for the government of the ſaid Corporation, provided the ſame ſhall in no caſe be repugnant to the laws of this Commonwealth; and provided alſo, the penalty annexed to a breach of the ſaid laws, ſhall in no caſe exceed the ſum of *fifty pounds*; and ſhall have full power and authority, to make and uſe a common ſeal, and the ſame at pleaſure to break, alter and revoke; and in all proceedings of the ſaid Corporation, the votes of the members ſhall be taken according to the real intereſt or number of ſhares which they reſpectively hold in the actual property of the ſaid Corporation.

Corporation made capable of ſuing, and being ſued, &c.

IV. *And be it further enacted by the authority aforeſaid*, That all goods which may be manufactured by the ſaid Corporation, ſhall have a label of lead affixed to one end thereof, which ſhall have the ſame impreſſion with the ſeal of the ſaid Corporation, and that if any perſon ſhall knowingly uſe a like ſeal or label with that uſed by ſaid Corporation, by annexing the ſame to any cotton, or cotton and linnen goods, not manufactured by ſaid Corporation, with a view of vending or diſpoſing thereof, as the proper manufacture of the ſaid Corporation, every perſon ſo offending, ſhall forfeit and pay treble the value of ſuch goods, to be ſued for, and recovered for the uſe of the ſaid Corporation, by action of debt, in any Court of record, proper to try the ſame.

Goods manufactured by ſaid corporation, ſhall have a label affixed to one end thereof.

[This act paſſed *February* 3, 1789.]

An Act to prevent Damage by Horſes going at Large.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That all Horſes and Horſe kind (of one year old and upwards) that ſhall be ſuffered to go at large, ſhall be conſtantly fettered with a ſufficient pair of fetters, from the fifteenth day of *April*, to the firſt day of *November*; and the owner of any ſuch Horſe, or Horſe kind, that ſhall be found going at large on the common, or ways, in any town

Horſes that ſhall be ſuffered to go at large, ſhall be kept conſtantly fettered.

town in this Commonwealth, not being ſufficiently fettered, ſhall forfeit and pay the ſum of *three ſhillings*, to be recovered by action of debt, by the field-driver, or any other perſon who will ſue for the ſame, before a Juſtice of the Peace in the ſame county, one third part to the uſe of the poor of the town where ſuch owner dwells, and the other two thirds to the uſe of the proſecutor.

When the owner of any horſe kind going at large, is unknown,—proceedings in ſuch caſes.

II. *And be it further enacted*, That when the owner of any Horſe kind, going at large, without being fettered, as this Act requires, is unknown; in ſuch caſe, the field-driver, or any other perſon, may impound them, and otherwiſe proceed with them as the law directs, in the caſe of ſtray-beaſts: And when the owner appears to demand ſuch Horſe, he ſhall pay the *three ſhillings* forfeiture, for each Horſe kind unlawfully at large, for the uſes aforeſaid, before delivery.

Proviſo,—that towns may grant liberty for horſes to go at large.

Provided always, That it ſhall be in the power of any town, at the annual meeting in *March* or *April*, by a vote thereof, to grant liberty for Horſes to go at large, without fetters, within the bounds of ſuch town, or in ſuch parts and diviſions thereof, as the town ſhall determine moſt for the benefit of the inhabitants, between the ſaid fifteenth day of *April*, and the firſt day of *November*; in which caſe it ſhall be lawful for any perſon reſiding therein, to ſuffer his Horſe to go at large unfettered accordingly, without incurring the forfeiture aforeſaid: *Provided further*, That no Horſe of the male kind, being ungelded, and more than one year old, ſhall be permitted to go at large on the common or high ways, with or without fetters; and the owner of any ſuch ungelded Horſe, ſo going at large, ſhall forfeit *twenty ſhillings*, to be recovered in the manner, and for the uſes herein before preſcribed.

Further proviſo.

Former laws repealed.

III. *And be it further enacted by the authority aforeſaid*, That all laws heretofore made, permiting Horſes to go at large on the common, be, and hereby are repealed.

[This act paſſed *February* 3, 1789.]

An Act directing the Mode of proſecuting Writs of Review, after the Death of any, or all of the Parties in the original Suit.

Preamble.

WHEREAS when judgment hath been recovered in any action, upon which a review is open and before ſuch writ is ſued out, or before judgment rendered therein, one or both of the parties may die, and doubts have ariſen whether the judgment in ſuch caſes is not final:

For the clearing of which,

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That

when in any real action, the demandant ſhall recover judgment for his ſeizen, and poſſeſſion of the demanded tenements, and ſhall die within the term allowed by law to the defendant, to review the ſame judgment, it ſhall be lawful for him within the ſaid term, to ſue out and proſecute his writ of review for the reverſal thereof, againſt the perſon in the actual poſſeſſion of ſuch tenements, or againſt him who hath right to hold the ſame under the demandant, in caſe the ſaid judgment ſhall not be reverſed, or both of them, at his election: And when in any ſuch real action as aforeſaid, judgment ſhall be rendered for the defendant for his coſts, and he ſhall die within the term allowed by law to the demandant, to review the ſame judgment, it ſhall be lawful for him within the ſame term, to ſue out and proſecute his writ of review, for the reverſal thereof, againſt the perſon in the actual poſſeſſion of the demanded tenements, or againſt him who hath right to hold the ſame, under the original defendant, in caſe the ſaid judgment ſhall not be reverſed, or both of them, at his election. And when both the demandant and defendant, or either of them, ſhall die after judgment rendered in the original ſuit, it ſhall be lawful for the heirs at law, of the party againſt whom judgment ſhall have been rendered in ſuch ſuit, or for any other perſon having a right under ſuch party to the ſeizen and poſſeſſion of the demanded tenements, in caſe the laſt judgment ſhall be reverſed within the term allowed by law, to ſue out and proſecute their writ of review, for the reverſal thereof, in manner and form as aforeſaid, or againſt the party who recovered in the original ſuit, if living: And in the ſeveral caſes mentioned in this enacting clauſe, the ſame proceedings and judgment ſhall be had, *mutatis mutandis*, as would have been had between the original demandant and defendant, if they had been in full life, and the writ of review had been pending between them.

Mode of proſecuting writs of review, after the death of any or all of the parties, in any real action.

II. *And be it further enacted by the authority aforeſaid*, That when judgment ſhall be recovered in any perſonal action, and one or both of the original parties ſhall die within the term allowed by law, to review the ſame judgment, no writ of review being pending between them, it ſhall be lawful, either for the ſurviving party, or for the Executors or Adminiſtrators of the deceaſed party, or parties, where both of them ſhall die as aforeſaid, within the ſame term, to ſue out and proſecute a writ of review, for the reverſal of the ſame judgment: And the ſame proceedings and judgment ſhall be had therein, *mutatis mutandis*, as would have been had between the original parties.

Mode of proſecuting writs of review after the death of the parties, in any perſonal action.

III. *And be it further enacted by the authority aforeſaid*, That if pending a writ of review, between the original parties, whether in a real or perſonal action, either of them ſhall die, his death ſhall, at the requeſt of the Attorney for either party, be entered upon the records of the Court, and the cauſe ſhall thereupon be continued, to the end, the heirs at law of ſuch deceaſed party, or other perſon intereſted

When a writ of review is pending, whether in a real or perſonal action, and either of the parties ſhall die—what proceedings ſhall be had.

intereſted in the tenements in queſtion, as aforeſaid, or his Executors or Adminiſtrators, as the caſe may be, may come into Court, and take upon them the proſecution or defence of the ſame ſuit to final judgment: And if after a reaſonable time, according to the diſcretion of the Court, granted for this purpoſe, neither of them ſhall appear as aforeſaid, or appearing, ſhall afterwards become non-ſuit, or be defaulted, then the ſame proceedings and judgment ſhall be had therein, *mutatis mutandis*, as would have been had between the original parties.

[This act paſſed *February* 9, 1789.]

An Act in Addition to an Act, paſſed in the Year of our Lord, One Thouſand ſeven Hundred and Eighty-One, entitled, An Act to incorporate certain Phyſicians, by the Name of The *Maſſachuſetts* Medical Society.

WHEREAS ſome doubts have ariſen with reſpect to the extent of the powers given to, and duties required of, the ſaid Society, by the Act to which this is an addition, touching the examination of any Candidates for the practice of Phyſic and Surgery, "who ſhall offer themſelves therefor, reſpecting their ſkill in their profeſſion," as well as with reſpect to the authority of the ſaid Society, to demand and receive a ſuitable compenſation for their time, trouble and expence, in examining Candidates, and for the letters teſtimonial, which by the ſaid Act they are required to give to ſuch as ſhall be approbated: Preamble.

For removing the ſaid doubts,

I. *Be it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That it ſhall be the duty of the ſaid *Maſſachuſetts* Medical Society, in order more effectually to anſwer the deſigns of their inſtitution, from time to time to deſcribe and point out ſuch a Medical inſtruction, or education, as they ſhall judge requiſite for Candidates for the practice of Phyſic and Surgery, previous to their examination before them, or their officers appointed for ſaid purpoſe, reſpecting their ſkill in their profeſſion, and ſhall cauſe the ſame to be publiſhed in three news-papers, in three different Counties within this Commonwealth: And every Candidate examined and approved by the Preſident and Fellows of the ſaid Society, or ſuch of their Officers or Fellows as they ſhall appoint, ſhall be held to pay ſuch reaſonable fees of office as ſhall be eſtabliſhed by the ſaid Society, for the examination of Candidates and letters teſtimonial in favour of ſuch as ſhall be approbated; and the Treaſurer of the ſaid Society for Sociey to point out ſuch Medical inſtructions for candidates, as they ſhall judge proper.

for the time being, ſhall have full power and authority to ſue for and recover the ſame, in any Court proper to try the ſame.

Part of a former act repealed.

II. *And be it further enacted*, That the eighth enacting clauſe of the ſaid incorporating Act, making the Preſident or ſuch other perſon or perſons as ſhall be elected for the purpoſe of examining Candidates, each and every of them, ſubject to a fine of *one hundred pounds*, in caſe of obſtinate refuſal to examine any Candidate offering himſelf therefor, be and it is hereby repealed.

Fine for obſtinately refuſing to examine candidates.

III. *And be it further enacted*, That from and after paſſing this act, whenever the officers appointed for examining Candidates for the practice of Phyſic and Surgery, ſhall obſtinately and unreaſonably refuſe to examine ſuch as may apply therefor, reſpecting their ſkill in their profeſſion, the officers ſo refuſing, ſhall be ſubject to a fine not exceeding *one hundred pounds*, nor leſs than *twenty pounds*, to be ſued for and recovered by the Candidate injured, and to his own uſe, in any Court within this Commonwealth, proper to try the ſame.

[This act paſſed *February* 10, 1789.]

An Act authorizing Executors and Adminiſtrators, to make Sale of all Real Eſtate mortgaged to their Teſtators, or Inteſtates, and ſuch as they ſhall take in Execution in certain Caſes.

Preamble.

WHEREAS doubts have ariſen, and may ariſe, with reſpect to the extent of the right, intereſt, title and eſtate, which executors or adminiſtratars, may have in houſes, lands and tenements mortgaged to their reſpective teſtators or inteſtates, and alſo the right, intereſt, title and eſtate, which executors or adminiſtrators, may have in houſes, lands and tenements, ſet off by execution, at the ſuit of executors or adminiſtrators, for debts due to the eſtates of perſons deceaſed: For the better defining and declaring the law in thoſe reſpects,

When any perſon to whom lands, &c. are mortgaged, ſhall deceaſe before recovery of ſeizen,—executors and adminiſtrators, authorized in ſuch caſes.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame*, That whenever any perſon or perſons, to whom any lands, tenements, or hereditaments, may be mortgaged for the payment of debts, or the performance of any collateral promiſe or engagement whatſoever, ſhall deceaſe before recovery of ſeizen and poſſeſſion of the lands, tenements, or hereditaments, mortgaged, that then the debts due on ſaid deed of mortgage, and the lands, tenements, or hereditaments, mortgaged by the ſame, ſhall be aſſets in the hands of executors or adminiſtrators, as perſonal eſtate, and the executors or

or adminiſtrators, ſhall have the ſame controul and power of diſpoſal of all the eſtate which the ſaid deceaſed had, in the lands, tenements and hereditaments mortgaged, as if they had been a pledge of perſonal eſtate; and executors or adminiſtrators, may bring actions for recovery of ſeizen and poſſeſſion of the lands, tenements, and hereditaments mortgaged, as aforeſaid; in which actions, it ſhall be ſufficient to declare on the ſeizen and poſſeſſion of the teſtator, or inteſtate.

When executors or adminiſtrators, ſhall recover ſeizen or poſſeſſion,—diſtribution, how made.

II. *And be it further enacted*, That whenever executors or adminiſtrators, ſhall recover ſeizen or poſſeſſion of lands, tenements, or hereditaments, mortgaged as aforeſaid, the executors or adminiſtrators, ſhall be ſeized and poſſeſſed of the eſtate ſo recovered, to the ſole uſe and behoof of the widow and heirs of the inteſtate, or ſuch deviſees of the teſtator, to whom ſaid eſtate may be deviſed. And the Court of Probate, may make diſtribution of the ſame, as of perſonal eſtate accordingly, unleſs the lands, tenements or hereditaments, mortgaged and recovered as aforeſaid, ſhall be neceſſary for the payment of debts, legacies, annuities or charges of adminiſtration; and in that caſe the ſaid executor or adminiſtrator, having obtained licence, in manner as by law provided, ſhall have full right, power and authority to diſpoſe and make ſale of the whole or part of the lands, tenements or hereditaments, recovered as aforeſaid, as though the teſtator or inteſtate, had died ſeized thereof, ſubject however to the right of redemption, in caſe ſuch ſale ſhall be made before ſuch right ſhall be extinguiſhed.

When judgment is recovered for money, & lands, tenements, &c. ſhall be ſet off, diſtribution to be made as of perſonal eſtate.

III. *And be it further enacted*, That whenever any executor or adminiſtrator ſhall recover judgment for any ſum of money, whereon execution ſhall iſſue, and lands, tenements or hereditaments ſhall be ſet off, to the ſaid executor or adminiſtrator, in diſcharge of the ſaid execution, the ſaid executor or adminiſtrator, ſhall be ſeized and poſſeſſed of the whole eſtate in the lands, tenements or hereditaments ſo ſet off, to the ſole uſe and behoof of the widow and heirs of the deceaſed inteſtate, or to the reſiduary legatee or legatees of the teſtator, as the caſe may be; and the Court of Probate may make diſtribution of the ſame, as of perſonal eſtate, accordingly; unleſs the lands, tenements or hereditaments ſo ſet off, on the ſaid execution, ſhall be neceſſary for the payment of debts, legacies, annuities or charges of adminiſtration; and in that caſe the ſaid executor or adminiſtrator, having obtained licence, in manner as by law provided, ſhall have full right, power and authority to diſpoſe and make ſale of the whole or part of the lands, tenements or hereditaments ſo ſet off as aforeſaid, ſubject however to the right of redemption, in caſe ſuch ſale be made before ſuch right ſhall be extinguiſhed.

IV. *And be it further enacted*, That after executors or adminiſtrators ſhall recover ſeizen and poſſeſſion of any lands, tenements or hereditaments mortgaged as aforeſaid, or ſhall become ſeized and poſſeſſed of lands, tenements or hereditaments, by having the ſame

set off in discharge of an execution as aforesaid, and before conveyance or assignment thereof, in manner aforesaid, if any mortgager, his heirs, executors, administrators, or assigns, or the person, his heirs, executors, administrators, or assigns, whose estate has been levied upon as aforesaid, shall within the time limited for redeeming the estate mortgaged or levied upon, redeem the mortgaged or levied premises, the executors or administrators shall in every instance be intitled to receive the said redemption money, and are hereby authorized, empowered and directed to discharge the said mortgaged premises or estate levied upon, by release, quitclaim or other legal conveyance.

Right of redemption allowed the mortgager, his heirs or executors.

No last will or testament to be controuled.

And be it further enacted, That nothing in this act contained, shall be construed to controul any last will or testament, or any part thereof.

Former act repealed.

And be it further enacted, That an act made and passed the twenty-seventh day of *June*, seventeen hundred and eighty-six, intitled, "An Act authorizing executors and administrators, to make sale of real estate mortgaged to their testators or intestates, and such as they shall take in execution in certain cases," be, and hereby is repealed.

[This act passed *February* 11, 1789.]

An Act authorising Courts having Criminal Jurisdiction, to award, in certain Cases, conditional Sentences against Offenders.

Preamble.

WHEREAS Courts having criminal jurisdiction, are authorised for the punishment of certain offences, to award at their discretion, either a fine or imprisonment, confinement to hard labour, or corporal and ignominious punishment of the offender:

And whereas the fines in such cases imposed, are oftentimes avoided by the inability or obstinacy of offenders, who remain in prison, at the great expence of the counties having them in charge, which discourages the infliction of fines.

Conditional sentences may be awarded in certain cases.

I. *Be it therefore enacted, by the Senate and House of Representatives in General Court assembled, and by the authority of the same*, That when before any Court, having jurisdiction thereof, any person shall be convicted of any crime or offence, which by law is punishable by a fine, or by imprisonment, confinement to hard labour, or corporal and ignominous punishment of the offender, at the discretion of such Court, the Justices of such Court, are hereby authorised and empowered, if they see cause, to award a conditional sentence against such offender, and to order such offender to pay a fine within a limited time, to be expressed in such sentence; and in default thereof, to suffer such other punishment as may by law be inflicted on the offender for such offence.

II.

II. *And be it further enacted,* That in caſe the perſons againſt whom ſuch ſentence ſhall be awarded, ſhall not pay the fine impoſed within the time limited, it ſhall be the duty of the Sheriff of the County, having charge of ſuch offender, to cauſe the other part of ſuch ſentence to be inflicted, according to the form and effect thereof, any law, uſage, or cuſtom, to the contrary notwithſtanding. Sheriff to cauſe ſentences to be inflicted.

[This act paſſed *February* 13, 1789.]

An Act for the incorporating of certain Perſons, for the Purpoſe of making, laying and maintaining a Boom acroſs *Androſcoggin-River*, in the County of *Lincoln*.

WHEREAS it appears that the laying a Boom *acroſs the River* Androſcoggin, *in the county of* Lincoln, *from* Topſham *ſide of ſaid river, at* Ferry-point, *ſo called, to a rock called* Maſon's *rock, about four rods from* Brunſwic *ſhore, for the purpoſe of ſtopping and ſecuring Logs and other Lumber, which is drifted down ſaid river, would be of great public, as well as private advantage :* Preamble.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That *Samuel Thompſon*, Eſq. *Ezekiel Thompſon, Benjamin Thompſon, Stephen Purrington, Thomas Thompſon, James Purrington, James Wilſon, Humphry Thompſon*, and *James Thompſon*, together with ſuch others as may hereafter become proprietors in ſaid Boom, be and hereby are conſtituted a Corporation, for making, laying, and maintaining a Boom acroſs the ſaid river as aforeſaid, ſo long as they ſhall continue proprietors of the fund to be raiſed for that purpoſe, together with all thoſe who are or ſhall become proprietors of ſaid fund, ſhall be a body politic, under the name of, "THE PROPRIETORS OF THE ANDROSCOGGIN BOOM," and by that name to ſue and proſecute, and be ſued and proſecuted to final judgment and execution, and to do and ſuffer all other matters and things, which bodies politic, may or ought to do and ſuffer ; and that ſaid Corporation ſhall and may have full power and authority, to make, have and uſe a common ſeal, and the ſame to break alter and renew at pleaſure. Proprietors incorporated. Their power and authority.

II. *And be it further enacted, by the authority aforeſaid,* That the ſaid *Samuel Thompſon, Ezekiel Thompſon, Benjamin Thompſon, Stephen Purrington, Thomas Thompſon, James Purrington, James Wilſon, Humphry Thompſon*, and *James Thompſon*, or any five of them, may by an advertiſement poſted up at ſome public place, in all the towns in which ſaid Proprietors live, call a meeting of ſaid Proprietors, to be holden at ſome ſuitable time and place, not leſs than fifteen days after the poſting up ſaid advertiſement ; and ſaid Proprietors, Proprietors may call a meeting.

prietors by a vote of the major part of the Proprietors preſent, or repreſented at ſaid meeting, ſhall chooſe a Clerk, who ſhall be duly ſworn to the faithful diſcharge of his office; and ſhall alſo agree upon a method for calling future meetings of ſaid Proprietors; and at the ſame or any ſubſequent meeting, may make and eſtabliſh any rules and regulations, that ſhall be neceſſary or convenient for regulating the ſaid Corporation, for effecting, compleating and executing the purpoſe aforeſaid, or for collecting the fees hereafter granted; and the ſame rules and regulations may cauſe to be kept and executed, or for breaches thereof may order and enjoin fines or penalties not exceeding *four pounds*. *Provided*, That the ſaid rules and regulations are not repugnant to the Laws or Conſtitution of this Commonwealth; and the ſaid Proprietors may alſo chooſe and appoint any other officer or officers, in the ſaid Corporation, which they may judge neceſſary; and all repreſentations made at ſuch meetings, ſhall be made in writing, and ſigned by the perſon making the ſame, which ſhall be filed with, or recorded by the Clerk; and this act, with all rules, regulations and votes of the ſaid Corporation, ſhall be fairly and truly recorded by the ſaid Clerk, in a book, or books, for that purpoſe to be provided and kept.

Proprietors ſhall chooſe a Clerk, make by laws, &c.

Proviſo.

III. *And be it further enacted, by the authority aforeſaid*, That the ſaid Corporation ſhall be entitled to and receive of the reſpective owner or owners of logs and other lumber by them ſtopped in ſaid river, rafted and properly ſecured for the owner (except boards or other lumber cut at the mills, on the river above the ſaid Boom) the following reſpective fees, *viz.* For each maſt, *four ſhillings*; for each log or logs, ſufficient to make a thouſand feet of boards, *two ſhillings*; for each boom, *four ſhillings*; for each bowſprit, *four ſhillings*; for each ton of oak timber, *two ſhillings*; for each ton of pine timber *one ſhilling* and *ſix pence*; for each hundred of ranging timber, *one ſhilling*; for each thouſand of ſhingles, *eight pence*; for each thouſand of ſtaves, *one ſhilling*; for each thouſand of clapboards, *one ſhilling*; and for any other kind of lumber, in the ſame proportion, according to the quantity: *Provided however*, That the fees aforeſaid, ſhall at all times hereafter, be ſubject to the reviſion and alteration of the Legiſlature.

Fees for ſtopping lumber.

Proviſo.

IV. *And be it further enacted, by the authority aforeſaid*, That for the ſecuring and recovering, the payment of the ſaid reſpective fees, it ſhall be lawful for the ſaid Corporation, by their ſeveral agents and ſervants to be appointed as aforeſaid, to hold and retain any logs or other lumber by them ſtopped in ſaid river, rafted and properly ſecured for the owner as aforeſaid, until payment, or tender of the ſaid reſpective fees, which ſhall have thereby become due to the ſaid Corporation. And it ſhall be the duty of the ſaid Corporation, their agents and ſervants, as aforeſaid, on payment or tender of the ſaid reſpective fees as aforeſaid, to reſtore and acquit to the owner or owners claiming the ſame, and producing, if required, reaſonable proof, of his, her, or their property therein, of all ſuch logs and other lumber which ſhall be at any time ſtopped and

Corporation empowered to retain lumber ſtopped, until payment of the fees.

and ſecured as aforeſaid; and on failure thereof, the ſaid Corporation, ſhall forfeit and pay to ſuch owner or owners, double the value of ſuch logs, or other lumber ſo unlawfully detained and converted as aforeſaid, to be in lieu thereof, and to be recovered by the ſaid owner or owners by action, to be brought and purſued before any Juſtice of the Peace, or other Court within the ſaid county, having juriſdiction of ſuch ſuit.

If no owner appear within ſix months, duty of the corporation in ſuch caſes.

V. *And be it further enacted, by the authority aforeſaid,* That if within ſix months from the time of ſecuring ſuch logs, or other lumber, no owner or owners, ſhall appear to claim and receive the ſame, paying fees as aforeſaid, it ſhall be the duty of the ſaid Corporation, their agents and ſervants as aforeſaid, to publiſh and advertiſe, for the ſpace of ſeven days at the leaſt, at the towns lying on the ſaid river, all ſuch remaining logs and other lumber, deſcribing the ſame as nearly as may be, with any marks appearing thereon. And if after the expiration of fourteen days, from the time of poſting ſuch advertiſements, no owner or owners ſhall appear as aforeſaid, all ſuch logs or other lumber ſhall be ſold and diſpoſed of at public vendue, for the moſt that can be obtained, and the proceeds of ſuch ſale, ſhall be retained and held by the ſaid Corporation, for the ſpace of one year thereafter; and any perſon or perſons proving within that time, their right in the ſaid logs, or other lumber which have been ſo ſold as aforeſaid, ſhall be entitled to the overplus of ſuch proceeds, after deducting the reſpective fees due for ſaving the ſame, together with all charges incurred by ſuch advertiſements and ſale. And if no owner or owners, ſhall appear within that time, the ſaid overplus ſhall be paid, one half into the Treaſury of the county of *Cumberland*, and the other half into the Treaſury of the county of *Lincoln*. *Provided nevertheleſs,* That the ſaid Corporation, ſhall lodge with one of the Town-Clerks, of the ſaid towns of *Topſham* and *Brunſwic*, within ten days after ſuch ſale, a memorandum in writing of the ſaid logs, or other lumber, deſcribing the ſame as near as may be, and an account of the proceeds of the ſale thereof, ſigned by the Clerk, or one of the Agents or Officers of the ſaid Corporation for the time being.

Proviſo.

[This act paſſed *February* 13, 1789.]

An Act reſpecting loſt Goods and ſtray Beaſts.

Money or goods found, of the value of 6s. notice how given.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That whoever ſhall find any money or goods loſt of the value of *ſix ſhillings* or upwards, whereof the owner is unknown, the finder ſhall within ten days next following, at the furtheſt, give notice thereof

in writing, unto the Clerk of the town in which they are found, and pay him *one ſhilling* and *ſix pence* for making an entry thereof in a book to be kept for that purpoſe, and for procuring the ſame to be recorded with the Regiſter of Deeds for the ſame county, as is in this act directed: And the finder ſhall alſo cauſe a notification thereof to be poſted up in ſome public place within the ſame town, and alſo ſhall cauſe the ſame to be publicly cried therein, on three ſeveral days, provided there ſhall be any public Crier in ſaid town: And if the money or goods, ſo found, be of the value of *forty ſhillings*, or upwards, then to be cried as aforeſaid, and notice thereof poſted up in like manner, in the ſame, and the two next adjoining towns, within one month next after ſuch finding.

If the money or goods found, amount to 40*ſ.*—notice how given.

II. *And be it further enacted*, That every perſon who ſhall find and take up any ſtray beaſt, ſhall cauſe the ſame to be entered, with the colour and marks, natural and artificial, and alſo to be poſted up and cried in manner and time as aforeſaid; and likewiſe, within ten days put and from time to time keep a wyth about the neck of ſuch ſtray beaſt (ſheep only excepted from being wythed) on pain of loſing all his charges about it afterwards: And ſuch finder of loſt goods or ſtray beaſt, ſhall alſo within two months, and before any uſe or improvement thereof is made to its diſadvantage, procure from the Town-Clerk, or a Juſtice of the Peace, a warrant directed to two ſuch diſintereſted judicious perſons as the Clerk or Juſtice ſhall appoint, returnable into the Town-Clerk's office in ſeven days from the date, to appraiſe and value the goods or ſtray beaſt upon oath, at the true value thereof in money, according to their beſt judgment, and to adminiſter an oath unto them for that purpoſe accordingly, which warrant and oath the Clerk and Juſtice are hereby reſpectively authorized to iſſue and adminiſter.

Stray beaſts to be cried, poſted and wythed.

Finder to cauſe the goods or ſtrays, to be appraiſed.

III. *And be it further enacted*, That if the owner of any ſuch loſt money, goods, or ſtray beaſt, appear within one year and a day next after ſuch notice of the finding given to the Town-Clerk as aforeſaid, and make out his right and title thereunto, he ſhall have reſtitution of the ſame, or the full value thereof, allowing and paying *three pence* for each time it was cried, and the money paid for entering the ſame as aforeſaid, together with ſuch neceſſary charges as ſhall have ariſen in keeping, notifying, appraiſing, and neceſſary travel reſpecting the buſineſs, to be liquidated and adjuſted by ſome Juſtice of the Peace of the ſame county, in caſe of diſagreement between the owner and finder: And if no owner appear within one year and a day as aforeſaid, then ſuch ſtrays, loſt money or goods, ſhall be and remain to the finder, he paying one half of the value thereof (all neceſſary charges being firſt deducted) according to appraiſement, unto the Treaſurer of ſuch town, for the uſe of the poor thereof, and to be recovered by the Town-Treaſurer, (upon neglect or refuſal to pay the ſame) as in other caſes.

If the owner appear within one year and a day, reſtitution ſhall be made.

No owner appearing, proceeds to be divided between the finder and the poor of the town.

IV.

IV. *And be it further enacted,* That the Town-Clerk ſhall once every two months tranſmit to the Regiſter of Deeds in the county where he lives, an authentic copy under his hand of all entries that ſhall be made with him of loſt money, goods, or ſtrays, excepting all ſuch loſt goods or ſtrays as ſhall be delivered to the owner thereof, within the ſaid two months, and ſhall pay to the Regiſter *ſix pence* for each copy of an entry tranſmitted to him as aforeſaid; and the Regiſter ſhall keep a book, wherein he ſhall record all entries tranſmitted by the Town-Clerk as aforeſaid, and give out copies of the ſame when deſired, at the price of *ſix pence* for each copy, and for ſearching ſuch record ſhall be allowed *two pence* and no more. And if any Town-Clerk or Regiſter ſhall neglect or fail of doing his duty, as by this act is provided and directed, their reſpective fees being paid, or tendered unto them as is in this act mentioned, he ſhall for every ſuch neglect, forfeit and pay the ſum of *forty ſhillings*, one half to the uſe of the county, and the other half to him or them that will proſecute and ſue therefor.

Town-Clerks to tranſmit copies of all entries of loſt goods or ſtrays, to the regiſter of deeds,

Regiſters to record the ſame.

Penalty for neglect.

V. *And be it further enacted,* That if any finder of any loſt goods, money, or ſtray beaſt, of the value of *ſix ſhillings* or upwards, ſhall neglect to cauſe the ſame to be entered, cried or poſted up in manner and time, as before directed, or to wyth ſuch ſtray beaſt, he ſhall forfeit and pay the full value of ſuch goods, money or ſtray beaſt, one half to the uſe of the county, and the other half to him or them that will proſecute and ſue for the ſame. And if the owner of any ſtray beaſt, or other perſon, ſhall take off the wyth from the ſame, or take away ſuch ſtray beaſt before all the neceſſary charges ariſen, for entering, crying, notifying, keeping and appraiſing thereof be defrayed, ſuch perſon ſo offending ſhall forfeit and pay unto the finder of ſuch ſtray beaſt, the full value of the ſame.

Penalty on the finder, for neglect of entering, crying, &c.

Penalty for taking off the wyth, &c.

VI. *And be it further enacted,* That no perſon from the fifteenth day of *April*, to the firſt day of *November*, ſhall take up any horſe, gelding, mare or other beaſt for a ſtray, unleſs ſuch beaſt be taken damage feaſant in ſome incloſure, and impounded for that, or ſome other ſufficient cauſe.

No ſtrays to be made at certain ſeaſons of the year.

VII. *And be it further enacted,* That all acts and laws heretofore paſſed relating to ſtrays and loſt goods, be, and hereby are repealed.

Former laws repealed.

[This act paſſed *February* 13, 1789.]

An Act for regulating Swine.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That there ſhall be appointed at the annual meeting in *March* or *April*, in each town, in this Commonwealth, two or more perſons for Hogreeves, who ſhall be choſen and ſworn in the ſame manner as other town officers;

Hogreeves to be annually choſen.

officers; whoſe duty it ſhall be to carry the regulations made by this act into execution; and any perſon who ſhall ſuffer his ſwine to go at large out of his incloſure, ſhall forfeit and pay *one ſhilling* for each ſwine thus ſuffered to go at large, to be recovered with coſts of ſuit by any Hogreeve or other perſon who will ſue therefor, before a Juſtice of the Peace in the ſame county, by action of debt, or by impounding ſuch ſwine. And when ſwine are impounded, to recover the penalty incurred by this act, the owner, if known, ſhall be notified in the time and manner by law directed, and if unknown, ſuch notice of the time, place and cauſe of impounding, ſhall be given as the law in that caſe hath directed; and if no owner appear within three full days after the impounding, to pay the forfeiture and charges, and reaſonable expence of keeping, or to replevy ſuch ſwine, the impounder may in writing apply to a Juſtice of the Peace of the ſame county, or to the Clerk of the ſame town, and there file an information of the tranſaction upon oath; and if it ſhall appear from ſuch information to the ſatisfaction of the Juſtice or Clerk, that ſuch impounder has complied with the directions of the law in ſuch caſes, then ſuch Juſtice or Clerk may iſſue a precept in form as hereafter preſcribed, to any Conſtable of the ſame town, if the Conſtable himſelf is not the impounder, or intereſted; and if he is, to any other diſcreet or diſintereſted inhabitant of the ſame town, to ſell the ſwine, and after paying the impounder the fine and coſts and expences, to be taxed and allowed by the Juſtice or Clerk, to deliver the ſurpluſage into the town treaſury, there to remain for the owner, deducting *one ſhilling* on the *pound* for the Treaſurer's trouble, in caſe he ſhall appear and claim it within one year and a day from the time of iſſuing ſuch precept; but in caſe no owner appear within that time, ſuch ſurpluſage ſhall be one half to the impounder, and the other half to the poor of the town, and be by the Treaſurer diſtributed accordingly.

Penalty for ſuffering ſwine to go at large.

When ſwine are impounded, penalty how recovered.

II. *And be it further enacted*, That the form of the precept to be iſſued for ſelling ſwine impounded, to recover the forfeiture incurred by a breach of this act, ſhall be in ſubſtance as follows:

Form of a precept for ſelling ſwine impounded, for a breach of this act.

S——*ſſ.* To either of the Conſtables of the town of

Seal. GREETING.

WHEREAS *A. B.* of *B*——, in the county of *S*——, *(addition)* has this day given me information, that on the day of he found a ſwine [here inſert the marks, natural and artificial if any, and ſuch a deſcription of the ſize and age, as can conveniently be done] owned by *C. D.* of *(addition)* going at large in ſaid town of *B*——, againſt the ſtatute in that caſe provided; whereby the ſaid *C. D.* forfeited the ſum of *one ſhilling*; for the recovery of which he impounded the ſame ſwine, and within twenty-four hours then next following, gave him notice thereof in writing (or left a notification thereof at his dwelling-houſe, as the caſe may be)

be) and although three full days have elapſed ſince the impounding, yet he has not paid the ſaid forfeiture and charges, nor has he replevied the ſame ſwine (or in caſe the owner is unknown, after the deſcription of the ſwine, its marks natural and artificial, let it be inſerted, belonging to ſome perſon unknown) at the time of impounding, going at large againſt the ſtatute in that caſe provided, whereby the owner forfeited the ſum of *one ſhilling*, for the recovery of which he impounded the ſame ſwine, and within twenty-four hours then next following, cauſed notifications of the time, place and cauſe of impounding, to be poſted up agreeably to the directions of the law in ſuch caſes; and although three full days have elapſed ſince the impounding, no perſon hath appeared to pay the ſaid forfeiture and charges, or replevied the ſame ſwine, as by the information by him ſigned and ſworn unto, with me now remaining, appears:

THESE are therefore, in the name of the Commonwealth of *Maſſachuſetts*, to will and require you, after you have poſted up notifications of the time and place of ſale, twenty-four hours beforehand, to ſell and diſpoſe of the ſaid ſwine, at ſuch time and place as you ſhall have thus appointed, to the higheſt bidder; and from the monies ariſing upon the ſale, you are to pay the ſaid *A. B. one ſhilling* for the ſaid forfeiture, and *ſhillings* and *pence*, by me allowed, for his coſts, charges and expences (according to the bill annexed) and *one ſhilling* and *ſix pence* more for this precept, amounting in the whole to *ſhillings* and *pence*. And the ſurplus ariſing from ſuch ſale, deducting *three ſhillings* and *ſix pence* for your own fees on the buſineſs, you are to pay over to the Town-Treaſurer of *B*——, to be diſpoſed of as the law directs; and you are alſo directed to deliver the ſaid Treaſurer a copy of the information of the ſaid *A. B.* as it is recited herein, together with a certificate of the date of this proceſs: And of this precept, with your doings hereon, you are to make return into the office of the Town-Clerk of *B*——, in fourteen days from this time. Given under my hand and ſeal, this day of *Anno Domini*

And when the precept is directed to a particular perſon by name, becauſe the Conſtable himſelf is the impounder, or intereſted, ſuch perſon ſhall be ſworn faithfully and impartially to execute it, according to the tenor thereof.

Perſon to whom the precept is directed, to be ſworn.

III. *Be it further enacted*, That any town may, at the annual meeting in *March* or *April*, by a vote thereof, give liberty for ſwine to go at large during the whole or part of the year, in ſuch town, or in ſuch parts thereof, as the town ſhall determine moſt for the benefit of the inhabitants; in which caſe it ſhall be lawful for any perſon reſiding therein, to ſuffer his ſwine to go at large accordingly, without incurring the forfeiture aforeſaid; any thing in this act contained to the contrary notwithſtanding. *Provided* ſuch

Towns may, at their annual meetings, give liberty for ſwine to go at large.

 ſwine

Proviſo.

swine shall be sufficiently yoked from the fifteenth day of *April*, to the first day of *November*, and constantly ringed in the nose all the time they shall be permitted to go at large.

And that it may be known what a sufficient yoking doth mean:

What shall be deemed a sufficient yoking.

IV. *Be it further enacted*, That a yoke which is the full depth of the swine's neck, above the neck, and half so much below the neck, and the soal or bottom of the yoke full three times as long as the breadth or thickness of the swine's neck upon which it shall be placed, shall be deemed a sufficient yoking within the meaning of this act.

[This act passed *February* 13, 1789.]

An Act for establishing a Salary of a fixed and permanent Value for the Governour, and repealing a Law heretofore made for that Purpose.

Preamble.

WHEREAS the Constitution of this Commonwealth provides that the Governour thereof shall have an honourable stated salary of a fixed and permanent value established by standing laws, that he may not be under the undue influence of any of the Members of the General Court, by a dependence on them for his support; that he may in all cases act with freedom for the benefit of the public; that he may not have his attention necessarily diverted from that subject to his private concerns, and that he may maintain the dignity of the Commonwealth in the character of its Chief Magistrate; and whereas the annual salary of eight hundred pounds *will be amply sufficient for all the purposes aforesaid: Therefore,*

Annual salary for the Governour, established.

I. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That from and after the last Wednesday of *May* next, the sum of *eight hundred pounds* in specie, be, and hereby is established as the annual salary of the Governour, for the time being, and a proportionable sum for a less time, in full for his services as Governour, to be paid out of the public treasury.

No fee or perquisite shall be allowed.

II. *And be it further enacted*, That the Governour shall not be intitled to any reward, fee or perquisite in addition to the salary established by this act.

Former law repealed.

III. *And be it further enacted*, That the aforesaid act for establishing a salary of a fixed and permanent value for His Excellency the Governour, passed the eighth day of *February*, one thousand seven hundred and eighty-one, shall from and after the last Wednesday in *May* next, become null and void.

[This act passed *February* 13, 1789.]

An

An Act providing for the Support of the Poor.

BE it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame, That when any perſon ſhall be poor and unable to ſupport himſelf, it ſhall be the duty of the Overſeers of the poor, where ſuch officers are choſen, otherwiſe it ſhall be the duty of the Selectmen, to take care of, and comfortably provide for his ſupport and maintenance, at the charge and expence of the town or diſtrict whereof he is an inhabitant, unleſs he has one or more relations within the Commonwealth, in the line or degree of father, or grandfather, mother, or grandmother, children, or grandchildren, who in the opinion of the Court of Common Pleas of the county where he belongs, are of ſufficient ability to ſupport him; in which caſe, ſuch relation or relations ſhall relieve and ſupport him in ſuch manner as the ſaid Juſtices ſhall order and aſſeſs; and when a poor perſon unable to ſupport himſelf, ſhall have ſeveral relations within the Commonwealth, in the degree aforeſaid, of ability to contribute to his ſupport, the Juſtices of the ſaid Court of Common Pleas, may from time to time, apportion his ſupport among them, or any of them, in ſuch proportion as under all circumſtances ſhall appear juſt and equitable.

Overſeers of the poor or ſelectmen, to provide for the ſupport of poor perſons, unleſs they have relations within the degrees mentioned.

II. *And be it further enacted by the authority aforeſaid,* That the ſaid Court of Common Pleas, may aſſeſs the relations of a poor perſon, within the degrees aforeſaid, for any coſt and charge incurred for his neceſſary ſupport, before he ſhall be ſo burthenſome as to be caſt upon the town, and alſo for charges incured for his maintenance before application is made to the Court of Common Pleas: *Provided* that no aſſeſſment be made in favour of any particular relation, or town, for any ſupport afforded for more than one year preceding ſuch application to the Court of Common Pleas.

Court of Common Pleas may aſſeſs the relations of a poor perſon, for his ſupport.

Proviſo.

III. *And be it further enacted by the authority aforeſaid,* That when any perſon, who is not an inhabitant of any town or diſtrict in this Commonwealth, ſhall ſtand in need of ſupport and maintenance, and have no relations within the degrees aforeſaid, reſiding within the Commonwealth, of ability to ſupport ſuch poor perſon, he or ſhe ſhall be relieved by the Overſeers of the poor, or Selectmen of the town or diſtrict where he or ſhe is ſituated, at the expence of this Commonwealth; and any town or diſtrict who ſhall incur expence for the neceſſary ſupport of ſuch poor perſon, ſhall be reimburſed the ſame from the Treaſury of this Commonwealth, by a warrant from the Governour with advice of Council; a particular account of the expence being exhibited, and after the ſame has been examined, and (ſo much thereof as ſhall be juſt and equitable) allowed by the General Court, or ſuch perſons as they from time to time ſhall appoint for that purpoſe.

Poor perſons, who are not inhabitants of any particular town, how relieved.

Provided

Proviſo.

Provided always, That the allowance of any ſum for the ſupport of a poor perſon as aforeſaid, ſhall in no manner operate as a determination that ſuch perſon is not an inhabitant of ſome town or diſtrict in this Commonwealth.

Overſeers or ſelectmen authorized to ſet to work or bind out ſuch children, whoſe parents are unable to maintain them.

IV. *And be it further enacted by the authority aforeſaid*, That the Overſeers of the poor in any town or diſtrict, where ſuch officers are choſen, otherwiſe the Selectmen or the major part of them, are hereby fully authorized and empowered, by and with the aſſent of two Juſtices of the Peace, to ſet to work, or bind out apprentice, all ſuch children, whoſe parents ſhall in their opinion be unable to maintain them, (whether they receive alms, or are chargeable to the town or diſtrict or not) in caſe they are not aſſeſſed to the government, town, or diſtrict, for rates, male children until they arrive to the age of twenty-one years, and females to the age of eighteen, unleſs ſuch females are ſooner married, which binding ſhall be as good and effectual in law to every intent and purpoſe, as if ſuch child being of full age, had by deed of indenture or covenant, bound himſelf: Proviſion to be made in the indenture for inſtructing the males to read, write and cypher, and females to read and write, as they reſpectively may be capable; and it ſhall be the duty of the Overſeers or Selectmen, to make enquiry into the treatment of children, bound out by themſelves, or their predeceſſors in office, and if they find them at any time injured, to ſeek a redreſs thereof; and the ſaid Overſeers or Selectmen, or the major part of them, are hereby further authorized and empowered, by and with the aſſent of two Juſtices of the Peace, to ſet to work, or bind out to ſervice for the ſpace of one whole year, at a time (by indenture, or by any other form of covenant) all ſuch perſons, married or unmarried, upwards of twenty years of age, able of body, who have no viſible means of ſupport, and live idly, and neither uſe or exerciſe any lawful trade, or ordinary calling for a ſubſiſtence; and the proceeds of the labour and ſervice of every perſon who by virtue of this act, ſhall be bound out to ſervice, (over and above the neceſſary coſts in and about the ſame) ſhall be taken by the Overſeers or Selectmen reſpectively, who ſhall bind out ſuch perſon, to be improved by them, for the ſupport of the family of ſuch perſon, if any he hath; but in caſe he hath no family to provide for, then to be laid out at the diſcretion of the ſaid Overſeers or Selectmen, for the uſe and benefit of ſuch perſon bound out as aforeſaid.

Authorized to ſet to work or bind out all ſuch perſons, (married or unmarried,) who have no viſible means of ſupport.

Proceeds of their labour, how improved.

Penalty for receiving or entertaining any perſon, for more than 90 days, without giving information.

V. *And be it further enacted by the authority aforeſaid*, That if any inhabitant of, or reſident in any town or diſtrict, ſhall receive, admit, or entertain any perſon not being an inhabitant of the ſame town or diſtrict, either as an inmate, boarder, or tenant, or by any other qualification, for more than ninety days, and ſhall not in writing give information thereof, to one or more of the Selectmen, or town or diſtrict Clerk, of the name of the perſon thus entertained, with

with the time he firſt received him, the place from whence he came, together with ſuch other circumſtances reſpecting ſuch perſon as have come to his knowledge, he ſhall forfeit and pay the ſum of *five pounds*, one moiety for him that will ſue and proſecute therefor, and the other moiety for the uſe of the town or diſtrict where the offence ſhall be committed: Provided the proſecution is commenced within one year after the ſaid forfeiture ſhall be incurred.

And to prevent the importation of poor, vicious and infirm perſons, who may prove chargeable to the Commonwealth, or ſome particular town or diſtrict therein:

VI. *Be it further enacted by the authority aforeſaid*, That when any maſter of a ſhip or other veſſel, ſhall arrive within this Commonwealth, with any paſſengers from any dominion or country without the United States of *America*, he ſhall before entry of his veſſel, make return to the office where he ſhall enter, of the names of all paſſengers on board the ſame veſſel, their nation, age, character and condition, ſo far as hath come to his knowledge, and that if any perſon entering ſuch ſhip or veſſel, ſhall neglect to make ſuch return, or wittingly and willingly make a falſe return therein, ſuch perſon ſo offending, ſhall forfeit his ſhare and part, and all intereſt which he ſhall have in ſuch veſſel, and the cargo therein, and ſhall further be liable to the forfeiture of the ſum of *fifty pounds*, which forfeitures ſhall be recovered by libel, indictment or action, according to the nature of the forfeiture, before any Court proper to try the ſame, one moiety thereof to the uſe of the Commonwealth, and the reſidue to him or them who ſhall inform or ſue for the ſame.

Clauſe to prevent the importation of poor, vicious, or infirm perſons.

VII. *And be it further enacted by the authority aforeſaid*, That if any Maſter of a ſhip or other veſſel, ſhall bring into and land within this Commonwealth, from any State or Country, any perſon who has been convicted of any crime, or who is notoriouſly of a diſſolute, infamous and abandoned life and character, knowing him or her to be ſuch, the veſſel in which ſuch perſon is imported, ſhall, together with the cargo therein, be forfeited, and the Maſter, or any other perſon entering ſuch veſſel, ſhall for every perſon ſo brought in or landed contrary to this act, forfeit the ſum of *fifty pounds*; the fines and forfeitures to be recovered in the ſame manner, and to the ſame uſes, as is provided for making a falſe return of paſſengers.

Penalty for bringing into this Commonwealth, perſons, who have been convicted of crimes.

And whereas diſputes may ariſe reſpecting the place of habitancy or legal ſettlement of a poor perſon:

VIII. *Be it further enacted by the authority aforeſaid*, That it ſhall be lawful for any town, diſtrict or perſon, who has been at expence for the ſupport of a pauper, not an inhabitant of the ſame town or diſtrict, to file a memorial in writing, in the Clerk's office of the Court of Common Pleas, in the county where the pauper is ſaid to belong, ſtating the facts and requeſting a determina-

Mode of ſettling diſputes reſpecting the place of habitancy of poor perſons.

tion of the habitancy, and a reimburſement of the expence incurred, and an order for a removal, and ſhall thereupon cauſe the town or diſtrict, where the pauper in the memorial is ſaid to belong, to be notified thereof, thirty days at leaſt before the ſitting of the ſaid Court, by leaving with ſome one or more of their Selectmen, or with their town or diſtrict Clerk, an atteſted copy of the ſaid memorial from the Clerk of the ſaid Court: And the ſaid Court of Common Pleas ſhall hear and determine the matter, with or without the intervention of a Jury, as the anſwer in writing to the memorial may require.

Court of Common Pleas may determine the matter of habitancy.

Provided always, It ſhall be lawful for any town, diſtrict or perſon who has been at expence for the ſupport of a pauper, ſaid to be an inhabitant of either of the towns in the county of *Nantucket* or *Dukes-County*, to file a memorial in manner already provided, in the Clerk's office of the Court of Common Pleas in the county of *Barnſtable* or *Briſtol*; and the ſaid Court of Common Pleas, ſhall hear and determine the matter in the ſame manner as if the pauper was ſaid to belong to any town within either of the ſaid counties of *Barnſtable* or *Briſtol*. And in caſe a town or diſtrict, when the Selectmen or town or diſtrict Clerk, have been ſeaſonably notified as aforeſaid, ſhall refuſe or neglect to appear and make anſwer in writing to the memorial by their Selectmen, or an Agent duly choſen therefor, the Court may proceed to hear the evidence, and determine the queſtion of habitancy, in their abſence; and in caſe the Court determine the queſtion of habitancy in favour of the memorialiſt or memorialiſts, they may proceed to examine and determine the *quantum* of expence incurred for the pauper, and order and decree a reimburſement, and iſſue execution therefor, with the neceſſary coſts attending the deciſion, and may alſo order the pauper to be removed to the town or diſtrict where he belongs, in caſe it be requeſted in the memorial: But in caſe the determination be in favour of the reſpondents, they ſhall recover their reaſonable coſts: And the inhabitants of any town or diſtrict, merely as ſuch, ſhall not be excluded from being witneſſes upon any proſecution on this ſtatute, on a ſuppoſition of being intereſted as members of the Corporation.

Proviſo,—with reſpect to the counties of Nantucket & Dukes-County.

And whereas indigent perſons are frequently brought into this Commonwealth, under various pretences, who are not inhabitants of any town or diſtrict within the ſame:

IX. *Be it further enacted by the authority aforeſaid*, That any perſon, who ſhall bring into this Commonwealth, any pauper or indigent perſon, and leave him or her in any town or diſtrict, within the ſame, of which town or diſtrict, he or ſhe is not an inhabitant, he ſhall forfeit and pay for every perſon ſo brought in and left, the ſum of *twenty pounds*, to be recovered in any Court proper to try the ſame, for the uſe of ſuch town or diſtrict.

Penalty for bringing paupers or indigent perſons into any town or diſtrict in this Commonwealth.

[This act paſſed *February* 14, 1789.]

An Act declaring the Cauſes for which Cattle may be impounded; the Manner how they ſhall be proceeded with in ſuch Caſes, and for preventing Reſcue and Pound Breach.

Each town to keep and maintain a ſufficient pound.

BE it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame, That there ſhall be kept and maintained in each town, at their proper coſt and charge, a ſufficient Pound or Pounds, in ſuch place or places therein, as the town ſhall direct, who ſhall alſo appoint a ſuitable perſon to keep each pound; wherein ſwine, ſheep, horſes and neat cattle may be reſtrained and kept for the cauſes herein after mentioned; and any town that ſhall neglect to provide or maintain ſuch pound for the ſpace of ſix months, ſhall forfeit and pay to the uſe of the county, *ten pounds*, to be recovered by preſentment of the Grand-Jury.

Penalty for neglect.

II. *And be it further enacted*, That there ſhall be choſen at the annual meeting for the choice of town officers, in each town, two or more perſons for Field-Drivers, who ſhall be ſworn to the faithful diſcharge of their truſt; and the Field-Drivers thus choſen and ſworn, are hereby ſeverally authorized and impowered, to take up and impound any ſwine unyoked or unringed, horſes unfettered, ſheep not under the care of a ſhepherd or going at large on the common or highways leading through ſuch town, between the fifteenth day of *April*, and the firſt day of *November*, and them in pound detain, or deal with, as is herein after mentioned, until the owner ſhall pay for the uſe of the Field-Driver, *one ſhilling* a head, for all ſuch horſes, and *three pence* a head for all ſheep and ſwine; beſides *two pence* a head for all ſuch horſes, and *one penny* for all ſheep and ſwine, to the Pound-Keeper, who may have the care of the particular pound in which they may be reſtrained.

Field-Drivers ſhall be annually choſen.

Their power.

III. *And be it further enacted*, That any perſon injured in his tillage, mowing or other lands under improvement, that are incloſed with a legal and ſufficient fence, whether ſuch improved lands be in a common or general field, or in a cloſe by itſelf, by ſwine, ſheep, horſes or neat cattle, may have and maintain an action of treſpaſs, *quare clauſum fregit*, againſt the owner of the cattle for his damages; or he may impound the creatures doing the damage, or ſome of them, at his election, with or without the aid of a Field-Driver; and in caſe he impound the creatures, he may reſtrain them in one of the town pounds, or in ſome other place under his immediate care and inſpection, as may be moſt convenient for relieving them with ſuitable meat and water; which relief it ſhall be duty of the perſon impounding to furniſh, or cauſe to be ſufficiently furniſhed, during their confinement.

Perſons injured, whoſe lands are ſufficiently fenced, may have and maintain actions of treſpaſs, &c.

And

When creatures are impounded, the owners ſhall be notified.

IV. *And be it further enacted*, That when any of the creatures aforeſaid, ſhall be impounded, whether it be done for being at large out of the owner's incloſure, or for doing damage as aforeſaid, the perſon impounding, ſhall inform the owner of the creatures impounded, (if known) within the ſpace of twenty-four hours, by giving him a notification thereof in writing or otherwiſe; and in caſe the owner of the creatures impounded be abſent, ſuch written notification ſhall be left at his houſe or uſual place of abode, deſcribing the creatures, and ſpecifying the time, place and cauſe of impounding. And the perſon impounding, ſhall alſo leave with the Pound-Keeper, if they are in the town or diſtrict pound, at the time ſuch creatures are committed to his cuſtody, a memorandum in writing, under his hand, of the cauſe of impounding, and the ſum he demands in damages from the owner, before they are liberated: And no action ſhall be maintained againſt the Pound-Keeper for detaining ſuch creatures, until that ſum, with his lawful fees, ſhall be paid.

Memorandum of the cauſe of impounding, ſhall be left with the pound-keeper.

Proviſo—if the owners ſhall think the damages required are unreaſonable.

Provided nevertheleſs, That if the perſon whoſe creatures are impounded, damage feaſant, ſhall think the damages mentioned in the memorandum, left with the Pound-Keeper, are unreaſonable, he may have the ſame aſcertained by two or more diſintereſted judicious perſons, being thereto appointed and duly ſworn by ſome Juſtice of the Peace for the ſame county, or by the Town-Clerk, where no Juſtice of the Peace is; which ſum thus aſcertained ſhall be taken inſtead of the ſum firſt left with the Pound-Keeper. And if the owner doth not within twenty-four hours after notice as aforeſaid, pay the damages and charges of impounding, or replevy the creatures, the party treſpaſſed upon, may apply to a Juſtice of the Peace or the Town-Clerk, for a warrant, directed to two or more diſintereſted judicious perſons; which warrant the Town-Clerk of the ſame town, or any Juſtice of the Peace in the ſame county, may iſſue, and make returnable into the town or diſtrict Clerk's office of the ſame town or diſtrict, as ſoon as the buſineſs is performed, and may alſo adminiſter an oath unto the perſons appointed, faithfully and impartially to eſtimate the damage done the party injured; and alſo to appraiſe ſo many of the creatures impounded, as ſhall be ſufficient to anſwer the damages and all charges. And the party damnified, after the perſons appointed as aforeſaid ſhall have aſcertained the damage, and valued ſuch of the creatures as ſhall be neceſſary to ſatisfy the ſame, and charges, and have made return of their warrant into the Clerk's office, with their doings thereon, may retain and keep the creature or creatures ſo appraiſed, to his own uſe, or may ſell the ſame at public vendue to the higheſt bidder, notice of ſuch ſale being poſted up at ſome public place, within the ſame town or diſtrict, twenty-four hours before hand; and in either caſe, returning the overplus, if any there be, to the owner,

When the owners neglect to pay the damages and charges,—what proceedings ſhall be had.

owner, and ſhall liberate the remainder of the creatures impounded; but in caſe the owner of the creatures impounded, be unknown, the perſon impounding ſhall cauſe the ſame to be publicly cried, or notifications thereof as aforeſaid, poſted up, in ſome public places in the town or diſtrict, and in the two next towns or diſtricts adjoining, in caſe the diſtance thereunto from the place where the creatures may be taken up, doth not exceed four miles; and if no owner or claimer appear within the ſpace of three full days next after the impounding and notifying as aforeſaid, then the perſon ſo reſtraining them, may proceed with them in all reſpects as the law provides reſpecting ſtrays, after having his damages aſcertained, in caſe the cattle be taken damage feaſant, in manner as is before provided.

In caſe the owner of creatures impounded, be unknown---they ſhall be publicly cried, &c.

V. *And be it further enacted*, That when an action of treſpaſs ſhall be brought againſt the owner of any of the creatures aforeſaid, for damages by them done upon his incloſed lands under improvement, or when ſuch creatures taken damage feaſant and impounded, ſhall be replevied, it ſhall be in the power of the Juſtice or Court before whom the cauſe ſhall be determined, to render judgment in favour of the perſon demanding damages for the injury ſuſtained, upon ſatisfactory evidence being produced, that ſuch creatures were either clandeſtinely turned in, or broke into the cloſe in a part where the fence was good and ſufficient according to law; ſome other parts of the fence round the ſame cloſe being deficient notwithſtanding.

When actions of treſpaſs are brought,--power of the Juſtice or Court.

VI. *And be it further enacted*, That if any perſon ſhall reſcue any creatures taken up as aforeſaid, out of the hands or care of the Field-Driver, or from the hands of any other perſon being about to drive or convey them to pound, whereby the party injured may be in danger of loſing ſuch his remedy, and the law evaded, the perſon thus offending, ſhall for ſuch reſcue, forfeit and pay the ſum of *forty ſhillings*, to be recovered by action of debt, one half part to him or them that will ſue for the ſame, and the other half part to and for the uſe of the county within which the offence is committed; and be further liable to pay the party injured, the full damages he might be intitled to recover by impounding ſuch creatures, in an action of the caſe.

Penalty for reſcuing creatures out of the hands of the field driver, &c.

And if any perſon ſhall make any pound breach, or by any indirect way or manner whatever, convey or deliver any of the creatures aforeſaid impounded, from the pound or place where they may be reſtrained, the perſon thus offending, ſhall forfeit and pay the ſum of *five pounds*, to be recovered by action of debt, one half to him that will ſue for the ſame, and the other half for the uſe of the county within which the offence may be committed; or by preſentment of the Grand-Jury; in which caſe the whole penalty ſhall inure to the uſe of the county: And the Court before whom

Penalty for pound breach.

the conviction ſhall be, may at the time of declaring the ſentence, further order, in default of payment of the ſaid ſum of *five pounds*, with coſts of proſecution, within fourteen days after ſentence, the perſon convicted to be publicly whipped not exceeding twenty ſtripes, or to be confined to hard labour for a term not exceeding ſix months; and the perſon offending as aforeſaid, ſhall be liable to pay the party injured, double the damage he may be intitled to recover, by the impounding ſuch creatures, in an action of the caſe; and the party injured by a pound breach, when it is effected by an apprentice or minor, may proſecute for his damages, the parent or maſter under whoſe care ſuch apprentice or minor may then be, or the apprentice or minor, at his election; in which action, as well as for damages occaſioned by the reſcue of cattle about to be impounded, the defendant ſhall not be permitted to give in evidence, the inſufficiency of the fence, if any ſuch there be, or that the creatures when taken were under ſuch circumſtances as to render the impounding illegal, to prevent the party from recovering his full damages.

When pound breach is effected by an apprentice or minor,—the party injured may proſecute the parent or maſter.

[This act paſſed *February* 14, 1789.]

An Act for limiting the Time within which Suits may be proſecuted againſt Executors and Adminiſtrators, and for perpetuating the Evidence of Notice given by them, and by Guardians and others, reſpecting the Sale of Real Eſtate.

Preamble.

WHEREAS executors and adminiſtrators frequently ſuffer great loſs and trouble, by reaſon of demands brought againſt them, after they have cloſed their accounts of adminiſtration, and ſettlement of the eſtate they have adminiſtered is made among the heirs or deviſees; for remedy whereof, as well as for the more ſpeedy ſettlement of eſtates,

When executors or adminiſtrators are appointed,—what notice ſhall be given.

I. *Be it enacted by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That whenever an executor or adminiſtrator ſhall be appointed to the eſtate of any perſon deceaſed, and ſhall take upon himſelf that truſt, by giving bond faithfully to diſcharge the duties thereof, as the law directs, he ſhall make known the ſame, within three months or ſooner, by cauſing notifications thereof to be poſted up in ſome public places in the town, diſtrict or plantation where the deceaſed was reſident, and had his habitancy at the time of his death; and ſhall alſo give ſuch further notice thereof, by cauſing the ſame to be publiſhed in ſome newſpaper, or in ſuch other manner, as the Court

Court of Probate (taking into conſideration the ſituation of the eſtate and buſineſs of the deceaſed) ſhall in writing direct. And if the deceaſed was neither an inhabitant or reſident within this government at the time of his death, the executor or adminiſtrator ſhall give ſuch notice of his undertaking that truſt, as the Court of Probate that iſſue the letters of adminiſtration, or approved the will, ſhall in writing direct: An affidavit of the executor or adminiſtrator made and filed in the ſame Probate Court, within ſeven months after undertaking that truſt, accompanied with an original notification (or a copy thereof) of his undertaking that truſt, and recorded in the Probate office, ſhall be admitted as evidence of the time, place and manner notice was given.

Affidavits ſhall be admitted as evidence that notice was given.

And that executors and adminiſtrators may have ſufficient time to obtain a competent knowledge of the ſituation and circumſtances of the eſtate of the perſon deceaſed, under their adminiſtration, as to its ſolvency:

II. *Be it further enacted*, That no executor or adminiſtrator ſhall be compelled in any Court of law to defend any ſuit that ſhall be commenced or inſtituted againſt him, in ſaid capacity, within the term of twelve months, next after his taking upon him that truſt, unleſs the ſame ſhall be inſtituted for the recovery of a demand that will not be affected by the inſolvency of the eſtate, or the ſuit ſhall be inſtituted for the purpoſe of aſcertaining a claim that is conteſted. And all ſuits brought within one year as aforeſaid, (except for the purpoſes aforeſaid) ſhall be continued at the plaintiff's expence, until that term from the time the executor or adminiſtrator gave bond in the Probate Court, for the faithful diſcharge of his truſt, ſhall be fully expired; and in caſe the executor or adminiſtrator pays the demand, or will bring ſufficient money into Court for that purpoſe, and there leave the ſame for the plaintiff's uſe, or ſhall make a legal tender thereof, to the plaintiff, within the year, he ſhall recover his coſts.

No executor or adminiſtrator ſhall be held to defend any ſuit inſtituted within twelve months; unleſs, &c.

Suits brought within that time, ſhall be continued at the plaintiff's expence.

III. *And be it further enacted*, That all claims of creditors to the eſtate of any perſon deceaſed, upon which an executor or adminiſtrator has already undertaken the adminiſtration, ſhall be exhibited and demanded of the executor or adminiſtrator of ſuch eſtate, within three years from the paſſing of this act, or within three years after ſuch claim may accrue, and not afterwards. And no executor or adminiſtrator that ſhall hereafter undertake that truſt, ſhall be compelled or held to anſwer to the ſuit of any creditor of his teſtator, or inteſtate, unleſs the ſame ſuit ſhall have been originally commenced within the term of three years next following his giving bond for the faithful diſcharge of his truſt, (except as hereafter excepted) provided ſuch executor or adminiſtrator ſhall give public notice of his appointment to that office, in the manner this act directs. The filing a claim with the commiſſioners upon an eſtate

Claims of creditors ſhall be exhibited within three years.

No executor or adminiſtrator ſhall be held to anſwer to any ſuit after that time.

Proviſo.

eſtate repreſented inſolvent, to be eſteemed equivalent to originating a ſuit againſt executors or adminiſtrators, within the meaning of this act.

Clauſe reſpecting demands ariſing from covenant, contract, or agreement, which could not be claimed until after ſaid term of 3 years.

IV. *And be it further enacted*, That when any certain demand againſt the eſtate of any perſon deceaſed, ariſing from covenant, contract, or agreement, ſhall commence and be in force, after the ſaid term of three years, and which could not by virtue of ſuch covenant, contract or agreement, (although known) be claimed until after the ſaid term, in ſuch caſe the claimant may at any time within the ſaid term of three years, file ſuch future demand at the office of the Probate Court, where adminiſtration was granted, or the will was approved; and ſuch Probate Court ſhall direct the executor or adminiſtrator to retain in his hands aſſets (if ſufficient there be) to anſwer ſaid demand, unleſs the heirs to ſuch eſtate or deviſees thereof, or ſome one or more of them, ſhall give good and ſufficient ſecurity in the opinion of the Judge of Probate, for ſuch executor or adminiſtrator to reſpond ſuch demand; and when ſecurity is ſo given, ſuch executor or adminiſtrator ſhall not be allowed to retain in his hands aſſets, for the purpoſe aforeſaid; the eſtate of the ſaid deceaſed, ſhall however be liable in the hands of the ſaid heirs or deviſees, or their heirs or aſſigns, to anſwer the ſaid demand.

Remedy may be had againſt thoſe who inherit the eſtate.

V. *And be it further enacted*, That where certain demands againſt the eſtate of any perſon deceaſed, ariſe by virtue of any covenant, contract or agreement, that could not be claimed until after the ſaid term of three years, (ſuch covenant, contract or agreement not being in full force during ſaid term) the claimant in ſuch caſe unleſs he ſhall have filed the ſame in the Probate Court as aforeſaid, may have his remedy againſt thoſe who inherit the eſtate of ſuch perſon, or deviſees thereof, againſt whom the demand lies, if ſuch claim be made within one year from the time of its becoming due, and not againſt the executor or adminiſtrator.

Proviſo, reſpecting the recovery of legacies, bequeſts, &c.

Provided always, That nothing in this act ſhall operate to bar any action that may be commenced againſt an executor or adminiſtrator with the will annexed, for the recovery of a legacy, bequeſt, gift or annuity, ariſing, accruing or becoming due, by virtue of any laſt will and teſtament, but the ſame may be commenced and proſecuted in the ſame time, way and manner, as they might have been, had this ſtatute never been made.

Preamble.

And whereas executors and adminiſtrators, upon their obtaining licence to ſell real eſtate for the payment of debts or legacies, are by law directed before ſale be made, "to give thirty days publick notice by poſting up notifications of ſuch ſale, in the town or plantation where the lands lie, as well as where the deceaſed perſon laſt dwelt, and in the two next adjoining towns, as alſo in the ſhire town of the county." But no particular method is provided for perpetuating

perpetuating the evidence that ſuch notice was given, by reaſon whereof diſputes may ariſe reſpecting the legality of ſuch ſales:

VI. *Be it therefore further enacted*, That the affidavit of the executor or adminiſtrator, or the affidavit of ſuch perſon or perſons as may be by them employed, to poſt up ſuch notifications, taken before the Probate Court, where ſuch executor or adminiſtrator derived his authority to adminiſter, within ſeven months next following the ſale of the real eſtate, and there filed and recorded, together with one of the original advertiſements of the time, place and eſtate to be ſold, or a copy of ſuch advertiſement, are hereby declared to be, one mode of perpetuating the evidence that ſuch notice was given, and alſo to make the originals or copies thereof, from the regiſter of the Probate Court, admiſſable evidence in any Court of law: And when the perſon employed by the executor or adminiſtrator, to poſt up ſuch notifications, reſides more than ten miles diſtant from ſuch Probate Court, his depoſition reſpecting that matter, taken before a Juſtice of the Peace, and filed in ſuch Probate Court, within the ſeven months as aforeſaid, ſhall have the ſame force and effect, as if the ſame was taken before the Probate Court; and the printing a notification, three weeks ſucceſſively, in ſuch gazette or news-paper, as the Court who may authorize the ſale, ſhall order and direct, ſhall be deemed equivalent to the poſting up of notifications as aforeſaid.

Mode of perpetuating evidence that notice was given reſpecting the ſale of real eſtates, by exetors and adminiſtrators.

VII. *And be it further enacted*, That guardians and others, who upon obtaining licence for the ſale of real eſtate, are or ſhall be directed to give publick notice before ſale be made, are hereby authorized to perpetuate the evidence, that ſuch notice was given, in the Probate Court, where the guardian or other perſon ſelling is directed to account for the proceeds ariſing from the ſale; in the ſame way and manner herein before provided for executors or adminiſtrators.

Guardians and others authorized to perpetuate evidence in the ſame manner.

VIII. *And be it further enacted*, That no executor or adminiſtrator, againſt whom any ſuit ſhall be commenced, after the expiration of one year from the time of his undertaking that truſt, ſhall be entitled to a continuance of courſe, but ſhall be held to aſſign ſome good cauſe therefor, before he ſhall be allowed a continuance.

Executors and adminiſtrators againſt whom ſuits are commenced, ſhall not be intitled to a continuance.

[This act paſſed *February* 14, 1789.]

An Act to prevent the Deſtruction, and to regulate the Catching of the Fiſh, called Salmon, Shad and Alewives, in the Rivers and Streams, in the Counties of *Cumberland* and *Lincoln*, and to repeal all Laws, heretofore made for that Purpoſe.

Preamble.

WHEREAS the preſervation of Salmon, Shad *and* Alewives, *is of great public advantage, and the laws heretofore made for that purpoſe, being found inadequate to the object intended thereby:*

Former laws repealed.

I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That all laws heretofore made to prevent the deſtruction, and to regulate the catching of Salmon, Shad and Alewives, ſo far as the ſame apply to any of the rivers, ſtreams, or branches, herein after mentioned, be and they are hereby repealed: *Provided nevertheleſs,* That all proſecutions, actions and proceſſes, now depending, and grounded on a ſuppoſed violation of any ſuch law, or laws, may be proſecuted to final judgment and execution, as though this act had never paſſed.

Proviſo.

No perſon allowed to erect or continue any obſtruction, or incumbrance, in the rivers or ſtreams mentioned.

II. *And be it further enacted by the authority aforeſaid,* That no perſon, or perſons, from and after the paſſing this act, ſhall build or erect any mill-dam, wears, obſtruction or incumbrance, or continue any mill-dam, wears, obſtruction or incumbrance already built, made or erected, or that may hereafter be built, made or erected, in or acroſs any of the rivers and ſtreams, or any of the branches, bays, or coves thereof, hereinafter mentioned, in the county of *Cumberland*, and of *Lincoln, viz.* The rivers of *Preſumpſcut, Androſcoggin, Merrymeeting-Bay, Kennebec, Sheepſcut, Briſtol, Muſcongus*, alias *Medumcook, St. Georges'* and *Penobſcot*, and alſo the ſtream of *Negwaſet*, and the ſeveral rivers, ſtreams and branches, centering to, running, iſſuing or emptying into the ſame, unleſs he or they do and ſhall actually provide, open, and keep open at their own expence, a good and ſufficient ſluice way, and paſſage for the ſaid fiſh to paſs, between the firſt day of *May*, and twentieth day of *June* annually; and if any perſon or perſons from and after the paſſing this act, ſhall build or erect any mill-dam or other obſtruction, or continue any mill-dam or other obſtruction already built, erected or made, or that may hereafter be built, erected or made in or acroſs any of the rivers, ſtreams or branches aforeſaid, in which the ſaid fiſh, before ſuch obſtructions, did uſually go up to the lakes and ponds to caſt their ſpawn, excepting as is herein before provided and allowed, he or they ſo offending ſhall forfeit for each and every day that ſuch obſtruction ſhall be continued, a ſum not exceeding *ſix pounds*, nor leſs than *three pounds*.

Penalty for ſuch offence.

Preamble.

And whereas the ſaid fiſh do not uſually go up ſome of the ſaid rivers and ſtreams, and the branches thereof into the lakes and ponds to caſt their ſpawns, ſo early as the firſt day of *May* annually:

III.

III. *Be it therefore enacted by the authority aforesaid*, That when it shall appear to the inhabitants of any town or plantation, or the major part of any Committee herein after mentioned and appointed, that the continuance of any such obstruction in or across any of the rivers, streams, or branches aforesaid, within the limits of such town or plantation, or the district of such Committee respectively, is expedient and advisable, it shall be in the power of such town or plantation, at any legal meeting of the inhabitants thereof, or of the major part of such Committee, in writing by them signed, to licence and authorize such continuance, to such reasonable time beyond the first day of *May*, as they may respectively judge equitable and right; any thing herein to the contrary contained notwithstanding.

Towns or plantations, at any legal meeting, may licence the continuance of obstructions.

IV. *And be it further enacted, by the authority aforesaid*, That no person or persons from and after the passing this act, shall take or catch any salmon, shad or alewives, in any part of the said rivers, or in any of the streams or branches aforesaid, between the twentieth day of *April*, and twentieth day of *June* annually, at any other time than between sunrise on Monday, and sunrise on Saturday, in each week.

No fish shall be taken at any other time than by this act allowed.

V. *And be it further enacted, by the authority aforesaid*, That no person or persons shall be allowed at any time between the said twentieth day of *April*, and the twentieth day of *June*, annually, to catch any of the said fish, or set any seine, net, pot or other machine for the purpose of taking or catching any of the said fish, within the distance of two rods from any sluice or passage-way, left open for the purpose of letting the said fish pass up any of the streams or branches aforesaid: And if any person or persons shall take or catch any of the said fish, or set any seine, net, pot, wears or other machine, for the purpose of taking or catching any of the said fish, in any of the rivers, streams or branches aforesaid, on any day or night, other than is allowed by this act, or within the distance of two rods of any sluice or passage-way, as aforesaid, he or they so offending, shall forfeit the seine, net, pot, wear or other machine so used, and pay a fine not exceeding *four pounds*, nor less than *ten shillings*, half thereof to the use of him or them that will prosecute therefor, and the other moiety for the benefit of the town or place where the offence is committed: And it shall be the duty of the Committee hereafter mentioned, or any one of them, upon finding any net or seine, setting or standing in any of the rivers or streams in this act mentioned, and in violation hereof, to take and seize the same, together with the fish that may be found therein, and the same net or seine and fish so taken, within twenty-four hours then next, to carry before some Justice of the Peace in the same county, and there libel the same, in which libel, the libellant shall describe the place where, the time when, and cause of seizure, and the articles thus libelled; and the Justice before whom such libel shall be made, shall cause a copy thereof under his hand, to be made out, and forthwith posted up in some conspicuous place

No person allowed to catch fish at any time, within two rods of any sluice, &c.

Penalty for such offence.

Committee empowered to take and seize nets and seines, &c. and libel the same.

or

or places in the vicinity, where he ſhall determine notice of the tranſaction will be moſt generally given, and therein aſſign a particular time and place for the owner or claimant to appear, which time ſhall not exceed ninety-ſix, nor be leſs than forty-eight hours from the time the libel ſhall be filed with him as aforeſaid; and if no perſon appear to claim the ſame, or if the perſon appearing, being the owner thereof, ſhall not make it appear to the ſatisfaction of the Juſtice, that he was not directly or indirectly by himſelf or any other perſon, by, for, or under him, concerned in ſetting ſuch net or ſeine, then the Juſtice ſhall enter up a decree that the ſame are forfeited, one half of the net or ſeine, and all the fiſh, to the uſe of the libellant, and the other moiety of the net or ſeine to the uſe of the town or place where the ſame were ſeized and taken, and order the ſame to be ſold at public auction accordingly, and ſhall proceed to ſell the ſame at auction himſelf, or make out a precept in writing, to ſome officer, to ſell the ſame accordingly; and in caſe upon a hearing, it ſhall appear to the Juſtice, that the net, ſeine or fiſh, are not by this act for the cauſes in the libel alledged, forfeited, he ſhall decree a reſtoration thereof, to the claimant, and deliver them to him accordingly; and for every libel and proceedings thereon as aforeſaid, the Juſtice ſhall be entitled to receive and demand *four ſhillings*, and no more, and at the rate of *fifteen per cent.* on the monies ariſing on the ſale.

If no perſon appear to claim ſuch nets or ſeines——How proceeded with.

Juſtices' fees for libels, &c.

VI. *And be it further enacted, by the authority aforeſaid*, That no ſeine or net, ſhall reach or extend more than one third acroſs any river or ſtream where the ſame ſhall or may be ſet, drawn or uſed, under the penalty of forfeiting the ſame; and any perſon who ſhall refuſe or prevent the Committee or any one of them, from meaſuring any ſeine or net, which ſhall be uſed for the purpoſe of taking any of the ſaid fiſh, in any of the rivers or ſtreams aforeſaid, ſhall forfeit and pay the ſum of *forty ſhillings*.

No ſeine or net to extend more than one third acroſs any river, &c.

And whereas the highly pernicious practice of wantonly deſtroying ſalmon in the ſummer ſeaſon, when the waters are ſhallow and the fiſh unable to make their eſcape, has become frequent and ruinous:

VII. *Be it therefore further enacted by the authority aforeſaid*, That no perſon or perſons from and after the paſſing this act, ſhall at any time, between the twentieth day of *July*, and the firſt day of *December* annually, take, catch or deſtroy any ſalmon in any of the rivers or ſtreams aforeſaid, on pain of forfeiting for each offence, a ſum not exceeding *four pounds*, nor leſs than *ten ſhillings*.

Penalty for taking or deſtroying ſalmon.

VIII. *And be it further enacted by the authority aforeſaid*, That the ſeveral towns and plantations within the counties aforeſaid to the weſtward of *Penobſcot-River*, bordering upon, or in which there are any of the rivers or ſtreams aforeſaid, including thoſe towns and plantations adjoining or connected with any of the ſtreams or branches on either ſide of the ſame, that empty into the ſaid *Penobſcot-River*, be, and they are hereby empowered and directed, at their annual

Towns and plantations to chooſe a committee annually.

annual meeting in *March* or *April*, forever hereafter, to chooſe by written ballot or otherwiſe, three or more ſuitable perſons, ſituated in ſuch town or plantation, ſo as to be able to detect, in the moſt effectual manner, any breaches of this act, as a Committee, whoſe buſineſs it ſhall be, to ſee that this act is duly obſerved within the town or plantation where they reſpectively belong; and each perſon ſo choſen and accepting, ſhall take an oath faithfully to diſcharge the duties required of him by this act; and the ſaid Committee ſo choſen and qualified as aforeſaid, or the major part of them, are hereby impowered and directed, to inſpect the ſeveral rivers and ſtreams within their reſpective diſtricts, and ſee that there is a ſufficient paſſage for the ſaid fiſh to paſs, open and kept open, without obſtruction, from the firſt day of *May*, until the twentieth day of *June* annually, incluſive, excepting as is herein before provided and allowed; and it ſhall be the duty of the ſaid Committee to make complaint of any and every breach of this act.

Duty of the Committee.

IX. *And be it further enacted by the authority aforeſaid*, That when the owner or owners of any mill or mills, mill-dam or other dams, erected in or acroſs any of the rivers or ſtreams aforeſaid, ſhall refuſe or neglect to open or continue open ſufficient ſluice-way or ways in their mill-dams, or other dams reſpectively, in every ſuch caſe, the ſaid Committee, or the major part of any of them, ſhall within their reſpective diſtricts, order ſuch ſluice-ways to be opened, and they are hereby authorized and directed to cauſe the ſame to be done as ſpeedily as may be; and the owner or owners of ſaid dams, ſo neglecting or refuſing, upon notice given them, or any of them, by the ſaid Committee, ſhall forfeit and pay a ſum equal to the reaſonable expence of opening and continuing open any ſuch ſluice-way or ways, with the addition of *fifty per cent.* thereto; which forfeiture, ſhall be recovered by the ſaid Committee, by action of the caſe, to be by them inſtituted and purſued to final judgment and execution, in their capacity aforeſaid; and the ſaid Committee when acting in their official capacity, in doing any buſineſs, matter or thing, agreeably to, or required by this act, ſhall not be conſidered as treſpaſſers, or be liable to any penalty or damage.

When owners of mills, &c. refuſe or neglect to open ſluice-ways,—Committee empowered to open the ſame.

Penalty for owners ſo neglecting or refuſing.

And whereas the practice made uſe of in taking ſalmon, ſhad and alewives in *Merrymeeting-Bay*, is very deſtructive to the ſaid fiſh, owing to ſeining and joining driving-nets together, which they make uſe of in the ſaid bay, and in the mouth of the rivers adjoining the ſame, for the purpoſe aforeſaid, where great numbers of the ſaid fiſh go to ſpawn:

Preamble.

X. *Be it therefore enacted by the authority aforeſaid*, That no perſon or perſons from and after the paſſing this act, ſhall take or catch any ſalmon, ſhad or alewives with ſeines or driving-nets joined together, either in *Merrymeeting-Bay*, or in the mouth of any river or rivers adjoining the ſame bay, on pain of forfeiture for each

Penalty for catching ſalmon, ſhad, &c. in Merrymeeting-Bay, with ſeines or driving-nets joined together.

and every offence, a ſum not exceeding *ſix pounds*, nor leſs than *three pounds*, with the forfeiture of the ſaid ſeines and nets ſo made uſe of.

Penalty if towns or plantations neglect to chuſe a Committee.

XI. *And be it further enacted by the authority aforeſaid*, That each and every town and plantation required by this act to chuſe a Committee for the purpoſe aforeſaid, that ſhall neglect to chuſe ſuch Committee, ſhall forfeit and pay the ſum of *fifty pounds*, for every ſuch neglect, one half thereof for the benefit of the county, to which ſuch town or plantation belongs, and the other half thereof to the informer, which may be ſued for and recovered by any perſon or perſons complaining of the ſame; and if any perſon ſo choſen ſhall refuſe to ſerve in ſaid office, unleſs he is choſen to ſome other office, he ſhall forfeit and pay the ſum of *forty ſhillings*, for the uſe of the poor of ſuch town, to be recovered by the Town-Treaſurer; and ſuch town ſhall proceed to a new choice, and ſo *toties quoties*.

Penalty if perſons choſen neglect to ſerve.

When any plantation ſhall neglect to chooſe, —Committee of any adjoining town, may proſecute any breaches of this act.

XII. *And be it further enacted*, That when any plantation within the limits aforeſaid, ſhall neglect to chooſe a Committee as aforeſaid, in any ſuch caſe the Committee of any town in the vicinity, or neareſt adjoining to the ſame, or the major part of them, may, and are hereby empowered and directed, upon information, to proſecute any breach of this act in ſuch plantation, as fully and amply as though the offence was committed in the town to which the ſaid Committee belong.

Fines and forfeitures, how recovered and applied.

XIII. *And be it further enacted*, That all fines and forfeitures incurred by breach of this act, ſhall be recovered by bill, plaint, or information, in any of the Courts of Record within the ſaid counties of *Cumberland* or *Lincoln*, proper to try the ſame; and all fines and forfeitures ſo incurred, by any offence committed againſt this act (that is not otherwiſe particularly appropriated) ſhall enure, the one moiety thereof to the poor of the town or plantation where the offence ſhall be committed, and the other moiety to him or them who ſhall make information of the ſame.

Proviſo, reſpecting proſecutions.

Provided nevertheleſs, That nothing in this act, ſhall be ſo conſtrued, as to debar any perſon of the right to proſecute, and they are hereby authorized and empowered, to proſecute and purſue to final judgment and execution, any breach of this act; and no perſon by reaſon of his being one of the Committee (choſen and qualified as aforeſaid) ſhall be thereby diſqualified from being a witneſs in any proſecution for the breach of this act.

Town-Clerks directed to read this act annually.

XIV. *And be it further enacted*, That the Town-Clerk in each town, and alſo the Clerk or one of the Aſſeſſors in each plantation required to chooſe a Committee aforeſaid, is hereby directed to read this act in a meeting of the town or plantation to which he belongs, in the month of *March* or *April* annually.

[This act paſſed *February* 16, 1789.]

An Act for rendering Proceſſes in Law leſs Expenſive.

WHEREAS it is the duty of the Legiſlature to provide means, by which the deciſion of Civil Cauſes may be as ſpeedy, and attended with as little expence as the nature of the Caſe will admit: Preamble.

I. *Be it therefore enacted, by the Senate and Houſe of Repreſentatives in General Court aſſembled, and by the authority of the ſame,* That from and after the firſt day of *June* next, every Juſtice of the Peace, within this Commonwealth, is hereby empowered and directed, to take cognizance of all civil actions of the value of more than *four pounds*, ariſing or happening within their reſpective counties, and all tranſitory actions, the cauſes of which are alledged to have ariſen therein, triable by the common or ſtatute laws, of what nature or kind ſoever, excepting only all actions of *audita querela*, all actions wherein the title of real eſtate may be concerned, all actions of *replevin*, *detinue*, *ſcire facias*, or actions againſt executors or adminiſtrators, agents, factors, truſtees and attornies of abſconding debtors, actions of debt on ſpecialties, and all actions of account againſt guardians, bailiffs and receivers. And it ſhall be in the power of any Juſtice of the Peace, within this Commonwealth, on application being made to him in all caſes, except in the caſes before excepted, to iſſue his writ of attachment and ſummons thereon, or original ſummons, directed to ſome proper officer within the county or counties, in which the debtor or debtors live, reſide, or have eſtate, goods or chattles, to execute the ſame; directing the perſon or perſons, againſt whom ſuch writ or ſummons ſhall iſſue, to appear before him the ſaid Juſtice, on a day and hour therein mentioned, to confeſs ſuch debt or demand, and ſuch writ or ſummons ſhall be duly ſerved by ſuch officer, at leaſt fourteen days before the time therein ſet for confeſſion; otherwiſe, the perſon ſummoned, ſhall not be held to anſwer thereon; and every officer making ſuch ſervice, ſhall indorſe the whole of his chriſtian and ſur-name, with the addition of his office, on the ſummons which he delivers, when goods or eſtate are attached, otherwiſe the defendant ſhall not be holden to anſwer to ſaid ſuit. Juſtices of the Peace empowered to take cognizance of all civil actions, &c.—excepting actionsmentioned. Juſtices empowered to iſſue writs of attachment and ſummons.

II. *And be it further enacted by the authority aforeſaid,* That ſuch writ and ſummons ſhall be in the following form:

(Capias or Attachment.)

S ſſ.

L. S. *To the Sheriff of the County of* S *or to either of his Deputies, or any Conſtable of the Town of* B *within the ſaid County,* GREETING. Form.

IN the name of the Commonwealth of *Maſſachuſetts*, you are required to attach the goods or eſtate of *A. B.* of in the county of *(addition)* to the value of *pounds*, and

and for want thereof, to take the body of the ſaid *A. B.* if he may be found in your Precinct, and him ſafely keep, ſo that he may be had before me, *C. D.* Eſq; one of the Juſtices of the Peace for the ſaid county of *S* at my dwelling-houſe in *B* in ſaid county, on the day of at of the clock, in the noon, then and there to anſwer to *F. G.* of *(addition)* and confeſſion make, if he ſee cauſe, of the following demand in a plea of *(here inſert the declaration.)* To the damage of the ſaid *A. B.* as he ſaith, the ſum of *pounds*, as ſhall then and there appear, with other due damages; and of this writ, and your doings herein, make due return to myſelf, at, or before the ſaid time of confeſſion. Dated at *B* aforeſaid, the day of in the year of our Lord,

C. D. Juſtice of the Peace.

(Summons when Eſtate is Attached.)

S ſſ.

To A. B. of in the county of (addition)

Summons when goods are attached. L. S.

GREETING.

IN the name of the Commonwealth of *Maſſachuſetts*, you are commanded to appear before me *C. D.* Eſq. one of the Juſtices of the Peace for the ſaid county of *S*——, at my dwelling-houſe in *B*——, in ſaid county, on the day of at of the clock, in the noon, to anſwer to *E. F.* of *(addition)* in a proceſs of confeſſion, (*here inſert the declaration proper for the ſummons*) to the damage of the ſaid as he ſaith, the ſum of *pounds*, which proceſs the ſaid *E. F.* hath commenced to be heard before me, and your goods or eſtate are attached to the value of *pounds*, for ſecurity to ſatisfy the judgment, which the ſaid *E. F.* may recover on the aforeſaid proceſs. Fail not of appearance at your peril. Dated at *B*—— aforeſaid, the day of in the year of our LORD,

C. D. Juſtice of the Peace.

(Original Summons.)

S ſſ.

Original Summons. L. S.

To the Sheriff of the county of S——, *or to either of his Deputies, or any Conſtable of the town of* B——, *within the ſaid county,*

GREETING.

IN the name of the Commonwealth of *Maſſachuſetts*, you are required to ſummons *A. B.* of (*addition*) to appear before me, *C. D.* Eſq. one of the Juſtices of the Peace for ſaid county of *S*——,

at

at my dwelling-houſe in *B.* in ſaid county, on the day of at of the clock, in the noon, then and there to anſwer to *E. F.* of *(addition)* and confeſſion make, if he ſee cauſe, of the following demand in a plea of *(here inſert the declaration.)* To the damage of the ſaid *E. F.* as he ſaith, the ſum of as ſhall then and there appear, with other due damages. And of this writ, and your doings herein, make due return to myſelf, at or before the ſaid day of

Dated at *B* aforeſaid, the day of in the year of our Lord,

C. D. Juſtice of the Peace.

Provided nevertheleſs, That in all actions where the ſum ſued for, is more than *twenty pounds*, the words, "*or any of the Conſtables of the town of B.*" ſhall be eraſed in the forms to be uſed by virtue of this act. Proviſo.

II. *And be it further enacted by the authority aforeſaid*, That any attachment made by virtue of the aforeſaid writ, whether of real or perſonal eſtate, or both, ſhall be held good and valid through the ſeveral proceſſes, which may be had on the cauſe, to final judgment, and until thirty days after the time provided by law for execution to iſſue, unleſs the defendant be therefrom diſcharged by order of law; and the body of any perſon attached by virtue of the aforeſaid writ, ſhall be held, unleſs ſooner diſcharged by the creditor, or by order of law, until thirty days after the time, at which execution may iſſue on the final judgment, and no longer. Attachments made by virtue of the aforeſaid writ, ſhall be valid.

III. *And be it further enacted by the authority aforeſaid*, That if after ſuch writ or ſummons ſhall be duly ſerved, the party ſummoned, after being duly called, ſhall not appear to anſwer to the ſaid ſuit, the charge contained in the declaration, ſhall be taken to be true, and the Juſtice ſhall give judgment for ſuch damages, as he ſhall find the plaintiff has ſuſtained, with his legal coſts. If the party ſummoned ſhall not appear, the charge in the declaration ſhall be taken to be true.

Provided always, That any plaintiff aggrieved at the judgment of the Juſtice in ſuch caſe, may appeal therefrom, either to the Supreme Judicial Court, or to the Court of Common Pleas, next to be holden in, and for ſaid county, that he may have his damages aſſeſſed by the Juſtices of the Court appealed to, or by a Jury, if the plaintiff require it, and the judgment thereon ſhall be final. Proviſo,—that an appeal be allowed the plaintiff.

Provided alſo, That the defendant may appear at ſaid Court, croſs-examine any witneſs, which the plaintiff may bring to give evidence in his cauſe, all or any proof he may think proper to invalidate the plaintiff's evidence, and to anſwer any of the plaintiff's arguments, and make ſuch obſervations as he may think proper, either by himſelf, or his attorney; in which caſe the plaintiff ſhall file in the Clerk's office of the Court appealed to, copies of the proceſs, and of the proceedings before the Juſtice, on the firſt day of the ſitting of ſaid Court, and may adduce any evidence he may Further proviſo, reſpecting the defendant.

think proper, in proof of his damages, and may appear either by himſelf, or by his attorney; but if on ſuch appeal, damages to a greater amount, than the plaintiff recovered by the judgment of the Juſtice ſhall not be aſſeſſed, in every ſuch caſe, the plaintiff ſhall recover no additional coſts.

No appeal allowed, unleſs demanded within 24 hours.

Provided nevertheleſs, That no ſuch appeal be granted by the Juſtice, unleſs demanded by the plaintiff, his agent or attorney, within twenty-four hours from the time ſet in the writ, or original ſummons, for the hearing.

No Juſtice ſhall appoint a Court earlier than nine o'clock, A. M.

IV. *And be it further enacted by the authority aforeſaid*, That in all proceſſes under this act, no Juſtice ſhall appoint a Court at an earlier time in the day, than nine o'clock in forenoon, nor later than four o'clock in the afternoon, and no default ſhall be entered, until the expiration of one hour, from the time ſet for confeſſion.

Juſtice ſhall uſe his endeavours to induce the parties to a reference.

V. *And be it further enacted by the authority aforeſaid*, That when a defendant or defendants, appear agreeably to the ſummons, and diſpute the demand of the plaintiff, or ſhall not confeſs to his acceptance, the Juſtice ſhall uſe his beſt endeavours, to induce the parties to a reference of ſuch diſpute or demand; and in caſe the parties agree to refer ſuch diſpute or demand, and agree on the perſons to determine the ſame, the referees ſhall have the ſame power, and the ſame proceedings ſhall be had thereon, in all reſpects, as are pointed out in an act, paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-ſix, intitled, "An Act for rendering the deciſion of civil cauſes as ſpeedy, and little expenſive as poſſible:" But if the parties in ſuch caſe, do not conſent to ſettle the ſame by reference, the plaintiff may carry his demand to the Court of Common Pleas, next to be holden in the ſame county, for trial, he giving notice to the defendant in the preſence of the Juſtice, (who ſhall make a record thereof) of the time and place, where the ſaid action is to be heard and tried; in which caſe the original writ, with an atteſted copy of the record of the proceedings before the Juſtice, together with all the papers filed in the Juſtice's office, in that proceſs, ſealed up in a wrapper, with the following direction on the out ſide. *To the honourable the Court of Common Pleas, for the county of to be held at on the Tueſday of* The proceſs of *A. B.* againſt *C. D.* containing papers, ſhall be by the Juſtice delivered to the plaintiff, who ſhall file the ſame, in the office of the Clerk of the Court of Common Pleas, on the firſt day of the ſaid Court's ſitting; and the plaintiff ſhall have a right to amend his declaration at the Court of Common Pleas; but if any alteration ſhall be made in the ſubſtance of the declaration, the plaintiff ſhall pay the defendant the lawful coſt he has been at, in ſaid action, until that time.

Referees power.

When parties will not conſent to a reference,—what proceedings ſhall be had.

VI. *And be it further enacted by the authority aforeſaid*, That when any defendant ſerved with proceſs under this act, ſhall appear

pear according to the tenor thereof, and the plaintiff ſhall neglect to enter his action, or to proſecute the ſame, in any ſtage of the proceſs before the Juſtice, the Juſtice in every ſuch caſe, on the complaint of the defendant, and his filing his ſummons, or an atteſted copy of the original writ, in the Juſtice's office, ſhall render judgment for ſuch defendant againſt the plaintiff for his coſt, and may iſſue execution thereon, in the ſame manner as is provided in actions of *four pounds* or under; and in every caſe where a defendant has appeared before a Juſtice as aforeſaid, and denied the plaintiff's demand, and the plaintiff has notified him (as in this Law is directed) to appear and anſwer ſaid demand, at the Court of Common Pleas, next to be holden in ſaid county, and ſuch plaintiff neglects to file his papers in the Clerk's office, as there directed, or to proſecute his ſaid action, ſuch Court, on the complaint of ſuch defendant, and filing in the Clerk's office, an atteſted copy of the ſaid Juſtice's record of ſuch notification, ſhall render the defendant judgment for his legal coſts.

When any defendant ſhall appear, and the plaintiff ſhall neglect to enter his action.—— Duty of the Juſtice in ſuch caſes.

VII. *And be it further enacted by the authority aforeſaid*, That when a defendant in an action under this act, appears to confeſs the plaintiff's demand, he ſhall do it on the back of the writ, or a paper thereto annexed, in the following words, *viz.*

Manner of proceeding, when any defendant ſhall confeſs a demand, &c.

And the ſaid A. B. *comes into Court, and confeſſes the juſtice of the plaintiff's demand, and that the plaintiff ought to recover of him debt, (or damage, as the caſe may be) and his coſt,—and hereto puts his hand* A. B.

And if the plaintiff accepts of the ſaid confeſſion, he ſhall inſert below—*and the plaintiff accepts of the ſame, and hereto puts his hand.* E. F. And the Juſtice ſhall certify below—*in preſence of* C. D. *Juſtice of the Peace.*

In which caſe, the Juſtice ſhall render up judgment for the ſum ſo confeſſed, and for the plaintiff's coſt, which has ariſen on the proceſs; but if the plaintiff will not accept of ſaid confeſſion, he ſhall inſert at the bottom of the confeſſion—*but the plaintiff will not accept of ſaid confeſſion and hereto puts his hand*, E. F. And the Juſtice ſhall certify as aforeſaid.

And in all ſuch caſes, the Juſtice ſhall proceed in the ſame manner, as is by this act provided when the defendant denies the plaintiff's demand; and if on the final judgment the plaintiff does not recover more debt or damage than the defendant confeſſed before the Juſtice, the plaintiff ſhall recover no more coſt than had ariſen on the proceſs at the time of confeſſion. And in every caſe when the plaintiff will neither accept or refuſe the confeſſion, as aforeſaid, the plaintiff ſhall be conſidered as becoming non ſuit, and the Juſtice ſhall render up judgment for the defendant for his coſt.

VIII. *And be it further enacted by the authority aforeſaid*, That every Juſtice of the Peace, in this Commonwealth, ſhall make a fair record of all the proceedings under this law, in a book bound for

Juſtices ſhall make a record of their proceedings under this act.

for that purpoſe, diſtinct from his book in which he keeps the records of the actions which come before him for *four pounds*, or under; and in making their records, they ſhall conform to the following forms:

(Record of a Judgment on Default.)

Record of a judgment on default.

S ſſ.

L. S. At a Court before *A. B.* Eſq. one of the Juſtices of the Peace for the county aforeſaid, at his dwelling-houſe in *B.* on the day of in the year of our Lord, *C. D.* of plaintiff, *E. F.* of defendant, in a proceſs of confeſſion, *(here inſert the whole of the declaration.)* And after the words, "to the damage of the ſaid *C. D.* as he ſaith, the ſum of *pounds*," add,—The plaintiff appeared and entered his action, but the defendant though ſolemnly called, did not appear, but made default; it is therefore conſidered by the ſaid Juſtice, that the plaintiff recover of the defendant, the ſum of and coſt of ſuit, taxed at

A. B. Juſtice of the Peace.

(And if the plaintiff appeals as in this law is provided, add,—From which judgment the plaintiff appealed to the Court next to be holden at *B.* within and for the ſaid County of *S.* on the Tueſday of

A. B. Juſtice of the Peace.

(Record of a caſe carried up to the Court of Common Pleas.)

Record of a caſe carried up to the Court of Common Pleas.

S ſſ.

L. S. At a Court (the ſame, as in a defaulted action, until it comes to the end of the words, "The plaintiff appeared and entered his action, then add) The defendant appeared and denied the plaintiff's demand.——The Juſtice then uſed his beſt endeavours, to induce the parties to ſubmit the demand to the determination of Referees, as the law directs; but they would not conſent thereto: The plaintiff then in Court, in the preſence of the Juſtice, notified the defendant, that he ſhould carry ſaid action to the Court of Common Pleas, next to be holden at *B.* within and for the ſaid county of *S.* on the Tueſday of as the law directs.

A. B. Juſtice of the Peace.

(And if the defendant appears and confeſſes himſelf indebted to the plaintiff, and the plaintiff accepts of the confeſſion, then after the words, on the record, "And the defendant appeared," add,) And

And made confeſſion as follows : *(Here add the confeſſion as made on the writ,* verbatim, *and the defendant's ſignature, with the plaintiff's acceptance, and the atteſtation of the Juſtice, then add)* " It is therefore conſidered by the ſaid Juſtice, that the plaintiff recover of the ſaid defendant, the ſum of debt, (or damage as the caſe may be) and coſts of ſuit, taxed at

A. B. Juſtice of the Peace.

(Record of a Caſe where the Defendant appears and makes a Confeſſion, which the Plaintiff does not accept of.)

S ſſ.

L. S. At a Court, (as in other caſes, until it comes to the end of the confeſſion, then add) " But the plaintiff refuſed to accept thereof, and under wrote his non-acceptance, and ſigned the ſame as on file," (then add as before) " The Juſtice uſed his beſt endeavors, to induce the parties to leave the diſpute to the determination of Referees as the law directs, but the parties would not conſent, (as before). But if the parties agree to ſubmit the diſpute or demand, to the determination of Referees, then after the words, " The Juſtice uſed his beſt endeavors to induce the parties to leave the diſpute to the determination of Referees as the law directs," (add) "And the parties agreed to ſubmit the diſpute, and all other diſputes (if that is the agreement) to the determination of *A. L. B. M.* and *C. O.* and entered into a rule for that purpoſe, as is by law provided."

A. B. Juſtice of the Peace.

Record of a caſe where the defendant appears and makes a confeſſion, which the plaintiff does not accept of.

But if the defendant denies the demand without confeſſing any part thereof, and they ſubmit the diſpute to a reference, then the record of the Juſtice ſhall conform to the foregoing form, ſaving only in that particular.—But if the plaintiff, after the defendant has confeſſed, will not accept, or refuſe the confeſſion, as aforeſaid, then after the record of the confeſſion, add,—But the plaintiff would neither accept of, or refuſe the ſaid confeſſion ; but became non-ſuit ; it is therefore conſidered by the ſaid Juſtice, that the defendant recover of the plaintiff, his reaſonable coſt, taxed at

A. B. Juſtice of the Peace.

Form, when the defendant denies the demand.

(Record of a Caſe, when the Plaintiff does not enter his action.)

S ſſ.

L. S. At a Court before *A. B.* Eſq. one of the Juſtices of the Peace for the ſaid county of at his dwelling-houſe in on the day of in the year of our Lord, *A. D.* of *(addition)* plaintiff, *C. F.* of *(addition)* defendant, in a proceſs of confeſſion, the plaintiff did not appear to enter his action, and the defendant appeared and entered complaint, filed his ſummons, and prayed for his coſt.—It is therefore conſidered by the ſaid Juſtice, that the defendant recover of the plaintiff, his coſt, taxed at

A. B. Juſtice of the Peace.

Record of a caſe when the plaintiff does not enter his action.

When the defendant is defaulted, execution ſhall iſſue after 20 days.

IX. *And be it further enacted by the authority aforeſaid,* That in all ſuch caſes where a defendant comes, and confeſſes to the acceptance of the plaintiff, or when the defendant is defaulted, execution ſhall iſſue from the ſaid Juſtice, after the expiration of twenty days, from the time of confeſſion or default, for the debt or damage recovered, together with lawful intereſt for the ſame, from the time of rendering judgment, to the iſſuing ſuch execution, and the coſt recovered by ſuch judgment; which execution may run into any county or place in this Commonwealth, and is hereby made awardable into any county or place in this Commonwealth, and ſhall there be executed by the Sheriff, Deputy-Sheriff, or Conſtable, to whom it ſhall be directed, and it ſhall be in the form following, *viz.*

Commonwealth of *Maſſachuſetts.*

S ſſ.

L. S. *To the Sheriff of the county of* S——, *or either of his Deputies, or any Conſtable of the town of* *within the ſame county,*

GREETING.

Form of ſuch execution.

WHEREAS *C. D.* of (*addition*) on the day of in the year of our Lord, by the conſideration of *A. B.* Eſq. one of the Juſtices of the Peace for the ſaid County of *S.* on the confeſſion (or non-appearance, as the caſe may be) recovered judgment againſt *E. F.* of (*addition*) for the ſum of debt (or damage as the caſe may be) and coſt of ſuit, as appears of record, of which execution remains to be done: We command you therefore, that of the goods, chattles, or lands of the ſaid *E. F.* within your precinct, you cauſe to be paid and ſatisfied to the ſaid *E. F.* at the value thereof in money, the aforeſaid ſums, together with the intereſt of ſuch debt or damage, being in the whole, with more for this writ; and thereof alſo to ſatisfy yourſelf for your own fees; and for want of goods, chattles, or lands, of the ſaid *E. F.* to be ſhewn to you, or found within your precinct, to ſatisfy the ſaid ſums, to the acceptance of the creditor, we command you to take the body of the ſaid *E. F.* and him commit to our gaol in , in our county of aforeſaid, and detain in your cuſtody, in our ſaid goal, until he pay the full ſums above-mentioned, with your fees, or that he be diſcharged by the ſaid *E. F.* the creditor, or otherwiſe by order of law:—Hereof fail not, and make due return of this writ, and of your doings herein, to our ſaid Juſtice, within ninety days next coming. Witneſs our ſaid Juſtice at *B.* aforeſaid, the day of in the year of our Lord,

A. B. Juſtice of the Peace.

X. *And be it further enacted by the authority aforeſaid,* That on the removal from office or death of any Juſtice of the Peace, the records of the ſaid Juſtice which by this act he is obliged to keep, ſhall be lodged in the office of the Clerk of the Court of Common Pleas, for the ſame county, together with all the papers on his files relating to any action brought before him under this act: And any Juſtice of the Peace who on his removal from office, ſhall neglect to lodge ſuch records and papers in the Clerk's office, as aforeſaid, for the ſpace of three months, ſhall forfeit and pay a ſum not leſs than *fifty*, nor more than *five hundred pounds*. And if any executor or adminiſtrator of any deceaſed Juſtice, ſhall neglect to lodge ſaid records and papers as aforeſaid, which ſhall come to his hands, in the Clerk's office, for the ſpace of three months after his acceptance of ſaid truſt, he ſhall forfeit and pay a ſum not leſs than *fifty*, nor more than *five hundred pounds*. And if any perſon ſhall knowingly deſtroy, deface or conceal any records of any Juſtice of the Peace, after his deceaſe, he ſhall forfeit and pay a ſum not leſs than *five hundred* nor more than *one thouſand pounds*. And all ſuch forfeitures ſhall be one half to the Commonwealth, and the other half to him or them, who ſhall ſue for the ſame, to be recovered in an action of debt in the county where ſuch Juſtice lived.

On the removal or death of any Juſtice, his records, &c. ſhall be lodged in the Clerk's office of the Court of Common Pleas.

Penalty for neglect.

Penalty for deſtroying, defacing or concealing ſuch records.

XI. *And be further enacted by the authority aforeſaid,* That all executions iſſued by any Juſtice of the Peace, under this act, ſhall be extended, levied, returned and recorded in the ſame manner, as is preſcribed by a law of this Commonwealth, paſſed in the year of our Lord, one thouſand ſeven hunded and eighty-four, intitled, "An act directing the iſſuing, extending and ſerving of executions," and ſhall give the ſame title to any real eſtate on which execution is extended and ſerved, as is therein provided.

Executions iſſued by any Juſtice, how extended, levied, &c.

Provided, That all ſuch executions ſhall be returned, within ninety days from the time of iſſuing the ſame, into the office of the Juſtice from whom ſuch executions iſſued, inſtead of the Clerk's office, as is in the aforeſaid act provided.

Proviſo.

XII. *And be it further enacted by the authority aforeſaid,* That on any action brought forward under this act, on an account ſtated by the parties, an account current, a *quantum meruit*, *quantum valebat*, for ſervices done at a ſtated price, or for goods ſold and delivered for an agreed price, the defendant may file any account he has againſt the plaintiff in the office of the ſaid Juſtice, on or before the time of confeſſion; and if the action is carried up to the Court of Common Pleas, or ſubmitted to the determination of referees, the ſame proceedings ſhall be had thereon, as are directed in a law of this Commonwealth, paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-four, intitled, "An act preſcribing forms of writs in civil cauſes, and directing the mode of proceedings therein."

Actions on an account current, a *quantum meruit*, *quantum valebat*, &c.—how conducted.

XIII.

When any Juſtice ſhall die, or be removed, after he has rendered judgment, and before execution is iſſued, what proceedings ſhall be had.

XII. *And be it further enacted by the authority aforeſaid*, When any Juſtice of the Peace ſhall die or be removed from office, after he has rendered judgment on any cauſe brought before him, under this act, and before execution is iſſued thereon, that in every ſuch caſe, the plaintiff may bring forward an action of debt on ſuch judgment, before any Juſtice of the Peace for the ſame county; and ſuch proceedings ſhall be had thereon, as in this act is provided for actions in general; and in every ſuch caſe, if the writ in ſaid action ſhall be iſſued while the attachment on the original action is valid, ſuch attachment ſhall hold good during the whole of the proceſs on ſuch action, and until thirty days after the time allowed by this act for the iſſuing execution on final judgment; and if any Juſtice ſhall die or be removed from office, after the ſervice of any writ by him iſſued, and before the time of confeſſion, or ſhall otherwiſe be prevented from holding his Court, it ſhall be in the power of any Juſtice of the Peace, within the ſame county, on application made to him for that purpoſe, to iſſue a citation to the defendant, in the form hereafter in this act preſcribed, directing him to appear before the ſaid Juſtice, at a day and hour therein mentioned, to confeſs judgment on the ſaid action, if he ſee cauſe, which citation ſhall be duly ſerved by the proper officer to whom it is directed, fourteen days at leaſt before the ſaid day; and the ſame proceedings ſhall be had thereon, as though the action had been originally brought before the ſaid Juſtice; and in every ſuch caſe, the attachment made on the original proceſs, ſhall be good in law, through the ſaid proceſs, and until thirty days after the time by law provided, when execution may iſſue on the final judgment; and the plaintiff failing to proſecute his action in any ſtage of the proceſs, ſhall be conſidered as non-ſuit, and the defendant ſhall recover his coſt.

Proviſo.

Provided always, That ſuch citation ſhall iſſue within forty days, next after the deceaſe or removal of ſuch Juſtice, otherwiſe the attachment on the original action ſhall become void.

Any perſon having proceſs commenced againſt him, may tender the plaintiff damages, &c.

XIII. *And be it further enacted by the authority aforeſaid*, That any perſon having proceſs commenced againſt him, as aforeſaid, may at any time after ſuch proceſs is commenced, tender the plaintiff the damages he has ſuſtained, and the legal coſt he has been at thus far; and if the plaintiff ſhall not accept of ſuch tender, but ſhall proſecute his ſuit, and on final judgment ſhall not recover judgment for more damages than the defendant did tender him, as aforeſaid, in every ſuch caſe, the plaintiff ſhall recover no more coſt than had ariſen at the time of the ſaid tender's being made.

Form of a citation preſcribed.

XIV. *And be it further enacted by the authority aforeſaid*, That the following ſhall be the form of the citation iſſued by a Juſtice, to direct a defendant to appear to anſwer to a ſuit commenced before a Juſtice who dies before judgment is rendered, or is removed from office, or prevented holding his Court, as aforeſaid.

S, ſſ.

S. ſſ.

L. S. *To the Sheriff of the County of* S——, *or to either of his Deputies, or either of the Conſtables of the Town of within the ſaid County,*

GREETING.

WHEREAS a writ of attachment, *(or original ſummons, as the caſe may be)* was iſſued againſt *A. B.* of *(addition)* at the ſuit of *C. D.* of *(addition)* by *E. F.* Eſq. late (or now) one of the Juſtices of the Peace for the ſaid county of *S*——, ſince deceaſed, (or removed from office, or prevented holding his Court at the time appointed, as the caſe may be,) which writ was made returnable to the ſaid Juſtice, on or before the day of You are therefore required to ſummon the ſaid *A. B.* to appear before me *G. H.* Eſq. one of the Juſtices of the Peace for the ſaid county, at my dwelling-houſe, in *B*——, in the ſaid county, on the day of to anſwer to ſaid proceſs. Form of the citation.

Hereof fail not, and of this precept and your doings therein, you are to make true return, at or before the ſaid time ſet for appearance. Dated at *B* , aforeſaid, the day of in the year of our Lord,

G. H. Juſtice of the Peace.

XV. *And be it further enacted by the authority aforeſaid,* That the Juſtice who iſſues a writ under this act, ſhall be intitled to *one ſhilling* for the blank, and *one ſhilling* for each citation to a defendant, in caſe of the death or removal of the Juſtice who iſſued the original proceſs, and ſhall have for entering an action or filing a complaint and ſummons, *one ſhilling*; for filing papers *one penny* each; for a writ of execution *one ſhilling* and *four pence*; for examining and allowing a bill of coſt, *three pence*; for ſwearing and examining witneſſes and aſſeſſing damages in a defaulted action, *two ſhillings*; for recording judgment, *one ſhilling*; for all copies of the proceedings or papers, *eight pence* per page; for a rule of ſubmiſſion to referees, *two ſhillings*; for each declaration, *one ſhilling* and *eight pence*; recording the defendant's denial of the demand, *eight pence*; for entering on his records the ſubmiſſion to a rule of reference, *four pence*. And if any perſon ſhall demand any other, or other greater fee for any of the ſervices that ſhall be performed by virtue of this act, than is by this law allowed, he ſhall forfeit and pay for every ſuch offence, the ſum of *ten pounds*, with coſts of ſuit, to him or them that will proſecute and ſue therefor by action of debt, within one year after the offence is committed, in any Court proper to try the ſame. Juſtices fees. Penalty for demanding greater fees than by law allowed.

But one attorney allowed on either ſide, at the Court of Common Pleas.

Provided always, That no action commenced under this act, ſhall be ſuſtained when the time therein ſet for confeſſion is more than ſix months, after the iſſuing ſuch proceſs: And but one Attorney ſhall be allowed to plead or argue on either ſide, at the Court of Common Pleas.

When writs of attachment, &c are iſſued, how directed.

XVI. *And be it further enacted by the authority aforeſaid*, That when any writ of attachment or original ſummons or execution is iſſued, againſt perſons reſiding in different counties, or againſt one perſon reſiding in one county and having eſtate in another, or being an inhabitant in one county, and cannot be found in the ſame, and in all other caſes when needful, the writs aforeſaid, may be directed to the ſeveral Sheriffs of the reſpective counties of , or their reſpective deputies, any thing in the form of the ſaid writs to the contrary notwithſtanding. And when a proceſs is commenced in which a Sheriff or his Deputy is a party, the direction in the ſaid writ ſhall be "To the Coroner of the county of ."

When an execution is levied on real eſtate, not liable to the extent thereof, what proceedings ſhall be had.

XVII. *And be it further enacted by the authority aforeſaid*, That when an execution iſſued under this act is levied on real eſtate, which afterwards appears not to have been liable to the extent thereof, at the time when ſuch execution was levied, in every ſuch caſe, the Juſtices of the Court of Common Pleas for the county where ſuch execution was iſſued, on application of the creditor, may order a writ of *ſcire facias* to iſſue againſt ſuch debtor, requiring him to appear before ſaid Court, at their next term, to ſhew cauſe (if any he has) why an *alias* execution may not iſſue, in which caſe the plaintiff ſhall carry up to the Court of Common Pleas copies of the whole proceedings before the Juſtice, and of the execution, and the officer's return thereon; and the ſame proceedings ſhall be had thereon, as if the execution had iſſued from the Court of Common Pleas.

When a proceſs ſhall be commenced againſt any perſon out of the Commonwealth, the Juſtice ſhall adjourn the Court.

XVIII. *And be it further enacted by the authority aforeſaid*, That when any proceſs under this act, ſhall be commmenced againſt any perſon who ſhall be out of this Commonwealth, at the time of the ſervice thereof, and ſhall not return before the time ſet for confeſſion, the Juſtice before whom the proceſs is commenced, ſhall adjourn his Court for not more than ſix months, nor leſs than two months; and on every other occaſion when the Juſtice ſhall deem it neceſſary, he may adjourn his Court for a term not longer than two months.

Writs and ſummonſes, when to be iſſued.

XIX. *And be it further enacted by the authority aforeſaid*, That all writs and ſummonſes iſſued by virtue of this act, ſhall be iſſued by a Juſtice of the Peace in the county where one of the parties live.

Actions on notes originally above 4*l.* and reduced by indorſement, how brought.

XX. *And be it further enacted by the authority aforeſaid*, That all actions brought for the recovery of a demand on any note of hand which was given originally for more than *four pounds*, and which by indorſement is reduced to *four pounds* or under, ſhall be brought before a Juſtice of the Peace, and by him heard and tried, in the ſame manner as though ſaid note was originally given for *four pounds* or under.

XXI.

XXI. *And be it further enacted by the authority aforeſaid*, That an act paſſed in the year of our Lord, one thouſand ſeven hundred and eighty-ſix, intitled, "An Act for rendering proceſſes in law leſs expenſive," together with all the ſubſequent acts made in addition thereto, and for continuing the ſame, are hereby repealed, from and after the firſt day of *June* next. Former act repealed.

Provided nevertheleſs, and be it further enacted by the authority aforeſaid, That the aforeſaid acts ſhall be ſo far continued in force, as to extend to the proſecuting to final judgment and execution all proceſſes which are or may be commenced thereon, previous to the ſaid firſt day of *June* next. Proviſo.

XXII. *And be it further enacted*, That this act ſhall continue in force, for the term of three years from the firſt day of *June* next, and no longer. Limitation of this act.

[This act paſſed *February* 14, 1789.]

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[*The* Index *does not include the several Introductory Papers inserted in the beginning of this* Volume, *but begins with the Laws of the Commonwealth, at Page* 1.]

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ERRATA. Page 18, line 7, after *or*, read *her*. Page 69, line 11 from bottom, for *power*, read *the power*. Page 85, l. 19 from bot. after *extending*, read *and levying*. P. 150, l. 22, for *their cognizance*, read *the recognizance*. P. 155, line 5, for *county*, read *country*. Page 163, line 11, for *or ſurname*, read *and ſurname*. Page 169, line 5, for *my*, read *may*. P. 224, line 22, for *thereupon*, read *thereunto*. P. 240, l. 17, for *firm*, read *arm*. P. 255, l. 11, for *claiſe*, read *act*. P. 271, l. 18, for *citizen in*, read *citizen of*. P. 308, l. 5 from bot. for *collecting*, read *calling*. P. 319, l. 3, for *any*, read *and*. P. 361, l. 12, for *retainers*, read *retailers*.—

Middlesex ss

To one of the Constables
of the town of Chelmsford in the County of Middlesex
Greeting

In the name of the Commonwealth of Massachusetts
You are hereby required forthwith to warn and give notice
to the following persons - (viz)

They being this day chosen by the town of Chelmsford
in publick town meeting to serve the town in offices

12d (back flyleaf - endpaper)